

МІНІСТЕРСТВО ОСВІТИ І НАУКИ УКРАЇНИ  
НАЦІОНАЛЬНИЙ ТЕХНІЧНИЙ УНІВЕРСИТЕТ  
«ХАРКІВСЬКИЙ ПОЛІТЕХНІЧНИЙ ІНСТИТУТ»

Л.В. Перевалова, І.В. Лисенко, А.М. Лисенко, Г.М. Гаряєва, О.В. Гаєвая

**ПРАВОВЕ РЕГУЛЮВАННЯ ГОСПОДАРСЬКОЇ ДІЯЛЬНОСТІ  
В УКРАЇНІ**

Навчальний посібник  
для студентів денної та заочної форми навчання,  
які навчаються за економічними спеціальностями

Perevalova L., Lysenko I., Lysenko A., Gariaieva G., Gayevaya O.

**LEGAL REGULATION OF ECONOMIC ACTIVITIES IN UKRAINE**

Navchalnyy posibnik  
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Харків  
2020

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*Рецензенти:*

*О.О. Щокіна*, к.ю.н., доцент, кафедри господарського права Національного юридичного університету ім. Ярослава Мудрого;

*О.В. Маноїленко*, д.е.н., професор, директор Навчально-наукового інституту економіки, менеджменту і міжнародного бізнесу,  
Національний технічний університет «Харківський політехнічний інститут»

У навчальному посібнику розглядається поняття, правовий статус суб'єктів підприємницької діяльності, порядок їх утворення та діяльності, кредитування, правове регулювання лізингу та оренди, біржова діяльність. Після кожної теми надаються тести, практичні завдання та теми для рефератів.

Для студентів, аспірантів та викладачів економічних, філологічних та технічних спеціальностей.

**Перевалова Л.В., Лисенко І.В., Лисенко А.М., Гаряєва Г.М., Гаєвая О.В.**

**П 68** Правове регулювання господарської діяльності в Україні: навчальний посіб. / Л.В. Перевалова, І.В. Лисенко, А.М. Лисенко, Г.М. Гаряєва, О.В. Гаєвая – Харків: НТУ «ХПІ», 2020. – 130 с.

**Perevalova L., Lysenko I., Lysenko A., Gariaieva G., Gayevaya O.**

**П 68** Legal regulation of economic activities in Ukraine: navchalnyy posibnik/  
Perevalova L., Lysenko I., Lysenko A., Gariaieva G., Gayevaya O. – Kharkiv:  
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The textbook discusses the concept, legal status of business entities, the order of their formation and operation, lending, legal regulation of leasing and renting, exchange activities. After each topic, tests, practical tasks and topics for abstracts are provided.

For students, graduate students and teachers of economics, philology and technical specialties.

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## Foreword

Economic law is one of the most important branches of law. Its norms regulate modern economic relations in the state. Modern economic legislation embodies the stages of socio-economic development of Ukrainian society. To understand the ongoing economic, financial, commodity-money relations in a modern state, it is necessary to master the basic system of knowledge in the economic sphere. Studying the course «Economic Legislation» is of direct importance for enhancing not only the legal culture of future specialists, but also contributes to the development of a number of professional and personal qualities among students. In particular, the ability to correctly understand and evaluate the ongoing socio-economic phenomena; development of the ability to legally competent actions in the conditions of market relations of the modern state.

To improve the quality of assimilation of lecture material in the manual, it is proposed to prepare essays on given topics and to test the knowledge gained to answer test tasks. The curriculum «Economic Legislation» is based on the main objective of this course - to provide training for highly qualified specialists who are ready and able to participate in the development of a sovereign, legal, democratic state.

This training manual prepared by the staff of the Department of Law NTU «KhPI», compiled in accordance with the subject of the training course «Economic Legislation», studied in higher technical educational institutions and taking into account the latest economic legislation based on existing legal theories. It is aimed at foreign students studying this discipline. For this purpose, an expanded list of Ukrainian legislation and international treaties and agreements that govern the activities of economic entities is used, special attention is paid to the creation and functioning of foreign enterprises and enterprises with foreign investment.

The discipline «Economic legislation» includes the following sections: «General characteristics of economic law», «Entrepreneurship as a means of carrying out economic activities», «Legal status of enterprises», «Legal status of foreign enterprises and enterprises with foreign investment», «Legal status of economic entities» , «The legal status of non-commercial entities of economic law», «Legal regulation of banking activities», «Legal basis for exchange trading activities», «Protection of rights and legal interests EU of business entities», «Legal regulation of property relations in Ukraine», «Economic and contractual obligations», «Economic and legal responsibility», «Security of economic activity», «Limitation of monopolism in the economy of Ukraine», «Legal regulation of bankruptcy», «Regulation foreign economic activity», «Ensuring product quality and consumer protection».

For a deeper study of individual topics of the discipline «Economic Legislation», students are also encouraged to use legislation, textbooks, workshops and other sources.

## **Topic 1. General characteristics of economic law**

1. The subject and method of economic law.
2. Principles of economic law.
3. Economic law relations.
4. Sources of economic law.
5. The system of economic law.

### **1. The concept and subject of economic law.**

*The subject of economic law* is economic relations that arise in the process of organization and implementation of economic activity between business entities, as well as between these entities and other participants in business relations.

*Economic activity, as the main element of the subject of economic law*, is the activity of business entities in the field of social production, aimed at manufacturing and selling products, performing work or providing value-added services that have price certainty.

*The method of economic law* is a set of means, techniques and methods by which the law is able to influence economic relations. The main, integrating method of economic law is *the equal subordination of all subjects of economic law to the public economic order*.

Public economic order is the dominant structure of material production in society, based on the provisions of the Constitution, legal norms, moral principles, business rules and customs, approved by the supreme legislative authority in strategic economic decisions, which ensures the harmonization of private and public interests, creates partnership and respectable relationships run by the household.

#### ***The scope of economic relations consists of:***

- *economic relations of production* - these are property and other relations that arise between business entities in the direct implementation of economic activity;
- *organizational and economic relations* - these are relations that arise between business entities and entities of organizational and economic authority in the process of managing economic activity;
- *intraeconomic relations* - this is the relationship that occurs between the structural units of the business entity, and the relationship of the business entity with its structural units.

### **2. Principles of economic law.**

#### ***The general principles of economic activity in Ukraine are:***

- ensuring economic diversity and equal protection by the state of all economic entities;

- freedom of entrepreneurial activity to the extent determined by law;
- free movement of capital, goods and services in Ukraine;
- restriction of state regulation of economic processes in connection with the need to ensure the social orientation of the economy, fair competition in business, environmental protection of the population, consumer protection and the safety of society and the state;
- protection of the national commodity producer;
- the prohibition of unlawful interference by state authorities and local authorities, their officials in economic relations.

### **3. Economic law relations.**

*Economic law relations* are a type of social relations in which the law relationship between business entities is manifested through the presence of subjective rights and obligations.

#### ***Types of economic law relations:***

- *absolute proprietary economic law relations* (the ownership of the means of production by the subject provides him with the necessary economic independence, which makes him independent from other persons);

- *Absolutely relative proprietary economic law relations* (property may be assigned to the subject in accordance with the right of full economic management, operational management, rent, in which case he owns, disposes and uses the property independently of all others, with the exception of the owner with whom he is in relative law relations);

- *Absolute economic law relations on the conduct of one's own economic activity* (arise regarding the conduct of one's own activity, during the implementation of which there are no specific obligated persons within the law);

- *relative obligatory economic law relations* (one participant has the right to require the other to carry out certain actions);

- *non-property absolute economic law relations* (arise about non-property benefits that are used by business entities in the process of activity).

#### ***The elements of the structure of economic law relations are:***

- *subjects of economic activity* - participants in economic relations that carry out economic activities, realizing economic competence (a set of economic rights and obligations), have separate property and bear responsibility for their obligations within this property, except as provided by law. They exercise their economic competence on the basis of the right of ownership, the right of economic management, the right to operational management and the right to the operational and economic use of property;

- *subjects of economic activity* - a blessing for the sake of which participants enter into economic relations. Objects of economic law are things (including money, securities), other property, property rights and other tangible and intangible benefits;

- *the content* - subjective economic rights and subjective economic obligations of participants in economic relations.

***Subjects of economic activity may be:***

1) citizens of Ukraine, foreign citizens and stateless persons who carry out business activities and are registered as entrepreneurs in accordance with the law;

2) economic organizations - legal entities: state, municipal, private and other enterprises, as well as other legal entities that carry out business activities and are registered in the manner prescribed by law;

3) branches, representative offices, other separated subdivisions of economic organizations (structural units) formed by them for carrying out economic activities.

***Signs of the subject of economic law:***

1) certainty of the legal form that the entity elects from among themselves provided by law;

2) property isolation that can exist in different forms: the property can be assigned to a business entity on the property right, full economic management, operational management and operational use;

3) the legitimacy of existence as a business entity (the requirement of state registration is established to article 58 of the Economic code of Ukraine);

4) the presence of economic rights and duties which constitute the economic competence;

5) responsible for results management (can be expressed in the form of economic responsibility for the adverse results of their own activities, operative-economic sanctions, financial liability).

**4. Sources of economic law**

***Sources of economic law*** are forms of establishing economic and legal norms in the state. They have different legal force. The highest legal power is the Constitution, followed by International treaties, ratified by Ukraine; codified regulations (codes), laws and regulations.

***Types of sources of economic law:***

1. International treaties ratified by Ukraine;

2. Acts of economic legislation of Ukraine:

- Constitution of Ukraine;

- The Economic Code of Ukraine;

- The Laws of Ukraine;
- Decrees of The President of Ukraine;
- Resolution of The Cabinet of Ministers;
- Normative legal acts of other bodies of state power of Ukraine, bodies of power of Autonomous Republic of Crimea and bodies of local self-government.

## **5. The system of economic law.**

The system of economic law is a set of legal institutions:

1. *The legislative institution of business entities* (section of the Economic Code «Entities» defines the types and legal status of economic entities, the procedures for their establishment and state registration, the procedure for termination of activities and liquidation. Detailing the legal position of individual types of business entities is represented, for example, in the Laws of Ukraine «On business associations», «On peasant (farmer) economy», etc.).

2. *The Institute of property management fundamentals* (section III of the Economic Code, «the Property fundamentals of management» defines the General principles of the legal regime of property of business entities, specification of these provisions contains, for example, in the Laws of Ukraine «On state property privatization», «On lease of state and communal property» etc.).

3. *Institute of economic contract law*. The current system of economic law on contract law is based on coded laws and normative acts about separate kinds of contracts. Economic Code of Ukraine and the Civil code of Ukraine contain provisions of contract law, certain types of obligations, liability for breach of obligations, the procedure for the conclusion, modification and termination of economic contracts, specific types of business contracts; Economic procedural code of Ukraine establishes the General regulation of differences and disputes at the conclusion, change and termination of economic contracts. An example of the laws on certain types of contracts may be the law of Ukraine «On leasing», «On concessions», «On investment activity», etc.

4. *The Institute of limitation of monopolism and protection of economic entities and consumers against unfair competition* (Chapter 3 of the Economic code of Ukraine, Laws «On protection of economic competition», «About Antimonopoly Committee of Ukraine», «On protection from unfair competition», etc.)

5. *Institute of legal regulation of economic and trading activities* that includes the norms of the Economic code of Ukraine, Civil code of Ukraine regulating relations in the sphere of supply, Contracting for agricultural products, energy, stock trading, rentals and leasing, and the Laws of Ukraine About commodity exchange, «On leasing» and others.



6. *Institute of legal regulation of financial activities* based on the Economic code of Ukraine and Laws of Ukraine «On the National Bank of Ukraine», «On banks and banking activity», «On securities and stock exchange», «On insurance», etc.

7. *Institute of foreign economic activity* – section VII of the Economic Code of Ukraine «foreign economic activity» and law of Ukraine «On foreign economic activity», «On regime of foreign investments», etc.

**Abstracts:**

1. The legal characterization of the Economic Code of Ukraine.
2. Economic activity and economic relations.
3. International treaties as a source of economic law.
4. Foreigners as subjects of economic relations.
5. Contract law as an institution of economic relations.

**Test tasks:**

1. Outline the principles of economic relations:
  - a) the principle of the inviolability of the individual;
  - b) the principle of protection of national producers;
  - c) the principle of social protection;
  - d) the principle of labor protection;
  - e) the principle of the inviolability of housing?
2. What types of sources of economic law:
  - a) the Statute of public organization;
  - b) the Economic Code of Ukraine;
  - c) collective agreement;
  - d) Constitution of Ukraine;
  - e) marriage contract?
3. Correctly named signs of the subject of economic law:
  - a) certainty of the legal form;
  - b) property isolation;
  - c) unitary;
  - d) licensed activities;
  - e) prohibition of unlawful interference in the activities of the entity?
4. Which of the following legal institutions included in the system of economic law:
  - a) the Institute of limitation of monopolism;
  - b) the Institute of property management fundamentals;
  - c) Institute of foreign economic activity;

- d) the nationality;
  - e) Institute of hereditary relations?
5. The elements of the structure of economic relations:
- a) the Economic Code of Ukraine;
  - b) business entities;
  - c) international treaties;
  - d) the object of economic relations;
  - e) the content of legal?

**Tasks:**

Task 1.

Locate the sources of economic law in descending order of legal force. If any document is not a source of economic law, explain why. If multiple sources have the same legal effect, place them side by side.

1. The law of Ukraine «On regime of foreign investments».
2. Rules of sale of separate kinds of the goods.
3. Supply contract between PJSC «Alfa» and «omega».
4. Standard contract of delivery.
5. The Civil Code of Ukraine.
6. The Code of ethics of the entrepreneur.
7. The law of Ukraine «On protection of consumer rights».

Task 2.

Appellate economic court of Kharkiv, considering case under the claim of the Russian private enterprise «Antey» to PJSC «Zembank» applied provisions of the Civil code of the Russian Federation.

What sources of law should apply to Ukrainian courts?

**Topic 2. Entrepreneurship as a means of exercising economic activities.**

1. Concepts and principles of entrepreneurship.
2. The creation of business entities.
3. Licensing and patenting of business activities.
4. The termination of business activities.

**1. Concepts and principles of entrepreneurship.**

*Entrepreneurship* is an independent, systematic, at own risk economic activity exercised by economic entities (entrepreneurs) to achieve economic and social results and profit (article 42 of the Economic Code of Ukraine).

### ***Principles of entrepreneurship:***

- a) *free choice of types of business activities;*
- b) *independent formation of programs of activities and choice suppliers and consumers of manufactured products, establishment of prices in accordance with the legislation; the involvement of logistic, financial and other resources whose use is not restricted by law, the establishment of prices for products and services in accordance with the law;*
- c) *free recruitment;*
- d) *economic calculation and its own economic risk;*
- e) *free disposal of profits that remains after taxes, fees and other payments stipulated by law;*
- f) *independent implementation by the entrepreneur of foreign trade activities, the use belonging to him of foreign exchange earnings, at its discretion, after payment of the required payments to the state budget.*

## **2. The creation of business entities.**

One of the main conditions for the exercise of entrepreneurship is the state registration of the enterprise. Such registration of economic entities is carried out in accordance with article 58 of the Economic code of Ukraine and regulated in details by the Law of Ukraine «On state registration of legal entities and individuals-entrepreneurs».

State registration of business entities is conducted by the state Registrar in the regional cities, as well as in the cities of Kyiv and Sevastopol city councils of people's deputies, and all other settlements in the district state administrations at the location or residence of the entity, if otherwise is not stipulated by law.

***For state registration of a business entity is served with the following documents:***

- *the decision of the owner (owners) of property or authorized by him (them) of the authority in the cases provided for by law;*
- *constituent documents required by law for the relevant legal entities;*
- *the decision of the Antimonopoly Committee of Ukraine for consent to establishment, reorganization (merger, annexation) of economic entities in the cases stipulated by law;*
- *a document verifying payment of the founders of contributions to the authorized Fund of a business entity in the amount prescribed by law;*
- *the registration card of the established sample;*
- *a document that certifies the payment of funds for the state registration.*

***Citizens who intend to carry out entrepreneurial activities without establishing a legal entity, submit the following documents:***

- *registration card of the established sample, which is at the same time a statement on the state registration;*
- *copy of the certificate on assignment of identification number of the citizen – taxpayer and other obligatory payments;*
- *a document certifying the payment for state registration.*

State registration of business entities is carried out within a period not exceeding 2 days from the date of submission of documents for individuals and no more than 3 days – for legal. The registrant is obligated during this period to give the entity the certificate on its state registration.

On the seals and stamps of a business entity must report an identification code, according to which the subject included in the state register of economic entities, or an identification code of a citizen-entrepreneur.

The certificate on the state registration of a business entity and a copy of the document that confirms its capture on the account in bodies of the state tax service is the basis for opening accounts in banks.

***Grounds for refusal of state registration of a legal entity:***

- *the violation of the statutory procedure for the establishment of a business entity;*
- *is the unreliability or inconsistency with the requirements of the legislation of documents submitted for registration.*

The refusal of state registration of a legal entity may be appealed in court. An unregistered entity that is subject to state registration, is prohibited. Profit received by such entity, will be charged to the State budget of Ukraine in the manner prescribed by law.

Re-registration of a business entity is carried out in case of change of ownership, which is based on the subject organizational forms of business, name of the entity and is carried out in the manner prescribed for its registration.

***Grounds for cancellation (termination) of state registration of a business entity:***

- *a personal statement;*
- *the decision of the court in the following cases: a recognition void constituent documents or such that contradict the legislation; the implementation of activities contrary to the law or constituent documents;*
- *in other cases stipulated by law.*

Cancellation of state registration ceases economic activity and is the basis for the implementation of measures on liquidation of the entity.

In accordance with article 42 of the Constitution of Ukraine everyone has the right to entrepreneurial activity that is not prohibited by law. The entrepreneurial

activity of deputies, officials and officers of bodies of state power and bodies of local self-government is limited by law.

In addition to the limitations of the subjective part of the entrepreneurship law of Ukraine set certain restrictions regarding the certain types of entrepreneurial activities. This prohibition to carry out certain activities without a special permit (license).

### **3. Licensing and patenting of business activities.**

**License** – the document of state sample, which certifies the right of a business entity – the licensee – to conduct a specified economic activity during a specified period, subject to the fulfillment of licensing conditions.

Relationships associated with licensing certain types of economic activities are governed by the Law of Ukraine «On licensing certain types of activities» dated 1 June 2000 the action of this Law extends on all subjects of farm management, however, licensing of banking, foreign trade, broadcasting channels, education, electricity and use of nuclear energy, intellectual property, production and trade of alcohol (ethyl, cognac and fruit), alcoholic beverages and tobacco is carried out in accordance with the laws that regulate the relations in these spheres.

***Licensing in accordance with article 9 of this Law shall be:***

- *search (exploration) and exploitation of mineral deposits;*
- *production, repair, trade in firearms, ammunition thereto, cold arms, pneumatic arms of caliber exceeding 4.5 mm;*
- *production of explosive substances and materials;*
- *production of especially dangerous chemical substances;*
- *mining of uranium ores;*
- *medical practice;*
- *other types of activities.*

For obtaining a license for each activity of the business entity submits to the authority that issues licenses, the statement about its results.

The decision on the license issuance or refusal to issue taking the licensing authority within a period not later than 10 working days from the date of receipt of application for license and documents attached to the statement. For the license set fee, the amount of which is determined by the Cabinet of Ministers of Ukraine.

The term of the license is established by the Cabinet and submission to the specially authorized body on licensing issues, but it cannot be less than 3 years.

***The license can be revoked on such grounds:***

- *statement of the licensee's license revocation;*

- *the act on the re breach of the licensee of licensed conditions;*
- *the decision to cancel the state registration of a business entity;*
- *a notarized copy of the death certificate of the natural person – subject of entrepreneurial activity;*
- *the act of detecting false information in documents submitted by a business entity for obtaining a license;*
- *other.*

Commercial activity exercised by economic entities for cash, and using other forms of payment and credit cards activities in the field of foreign exchange trading, providing services in the field of playing business and consumer services subject to patenting.

**Trade patent** – a state certificate, which certifies the right of a business entity or its structural units to engage in certain types of business activities for a set period.

**Special trade patent** – a state certificate, which certifies the right of a business entity for a special order of taxation in accordance with the law.

Patenting certain types of entrepreneurial activity established by the Law of Ukraine «On patenting some business activities» of March 23, 1996, the basis for obtaining a trade patent for the right of implementation of the respective entrepreneurial activity is the statement of a business entity in the state tax authority. Trade patent is issued within three days from the date of submission of the application.

#### **4. The termination of business activities**

##### ***Grounds for termination of entrepreneurial activity:***

- 1) *on its own initiative entrepreneur;*
- 2) *in the case of expiration of the license;*
- 3) *in the event of termination of existence of the entrepreneur.*
- 4) *on the basis of a court decision in cases stipulated by the law.*

With the aim of creating favorable organizational and economic conditions for entrepreneurship development authorities provide entrepreneurs land, transfer of state property necessary for the conduct of business activities; contribute in organizing logistics and information services; stimulate technological upgrading, innovation, development of entrepreneurs, new products and services; provide entrepreneurs with other types of assistance.

#### **Abstracts:**

1. The restriction on entrepreneurial activities in Ukraine.

2. The procedure of state registration of business entities.
3. State support of entrepreneurship in Ukraine.
4. Types of business activities subject to licensing.
5. Patents and patenting certain types of entrepreneurial activity.

**Test tasks:**

1. Principles business activities in Ukraine:
  - a) the principle of justice, of good faith and reasonableness;
  - b) the principle of equality of subjects of entrepreneurial activity;
  - c) the principle of free hiring;
  - d) the principle of labor protection;
  - e) the principle of the inviolability of housing?
2. The types of documents submitted for registration of a business entity:
  - a) statutory documents required by law;
  - b) the registration card of the established sample;
  - c) collective agreement;
  - d) Constitution of Ukraine;
  - e) credit agreement;
  - f) employment contract?
3. Grounds for liquidation of a business entity:
  - a) personal application;
  - b) the decision of the court;
  - c) the death of the founder of a business entity ;
  - d) the decision of the local authority;
  - e) the decision of the Prosecutor?
4. Grounds for termination of entrepreneurial activity:
  - a) a private initiative of the entrepreneur;
  - b) death of the founder of a business entity;
  - c) the decision of the court;
  - d) the expiration of the license;
  - e) lack of profit?
5. Which of the following types of activities subject to licensing:
  - a) transportation;
  - b) tutoring activities;
  - c) medical practice;
  - d) sale of food;
  - e) the practice of law?

## **Tasks:**

### Task 1.

A citizen of Ukraine Ivanenko I. P. carries out an independent, systematic, at your own risk activities provision of intermediary services for profit.

Whether Ivanenko I. P., the subject of economic law? Justify your answer, citing relevant provisions of the current legislation of Ukraine.

### Task 2.

The citizen of the Russian Federation, Vasil P. G. paid the registration fee in the established size and, wishing to carry out business activities on the territory of Ukraine without creating a legal entity, has submitted to the state registration authority the following documents:

- registration card,
- three photographs,
- copy of the certificate on assignment of identification number as a taxpayer, - his decision, signed by all members of the family about the intention to carry out entrepreneurial activity,
- a photocopy of the marriage certificate
- a document confirming payment for state registration.

Do you have registered on the grounds for refusal Vasilchenko p. P. for state registration? Justify your answer with reference to legislation.

## **Topic 3. Legal status of enterprises.**

1. Concepts and characteristics of the enterprise. Types of enterprises in Ukraine.
2. The order of creation of the enterprise. The termination of the company.
3. Concepts and types of enterprises.

### **1. Concepts and characteristics of the enterprise. Types of enterprises in Ukraine.**

*The enterprise* – independent business entity created by the competent public authority, local government or other entities for satisfaction of social and personal needs through systematic implementation of industrial, research, commercial and other economic activities (article 62 of the Economic code of Ukraine).

The enterprise is a legal entity, has separated property, independent balance, accounts in establishments of banks, seal with its name and identification code. They can be created for doing business and for non-commercial economic activities. If the



law does not provide other, the enterprise operates on the basis of the Charter. The company should have in its composition of other legal entities.

***Enterprises in Ukraine can be classified on various grounds:***

***1. Depending on the form of ownership on which they are based, they are divided into:***

- *private enterprise operates on the basis of private ownership of citizens or entity (legal person) business for example, the peasant (farmer) economy;*

- *the utility operates on the basis of communal property of territorial communities;*

- *state enterprise operates on the basis of state property;*

- *the company, based on the mixed form of ownership (on the basis of Association of property of different subjects of ownership).*

***2. Depending on the method of formation (creation) and the formation of a Statutory Fund by:***

- *unitary* – created by a single founder, such as the state, municipal enterprises based on the ownership of associations of citizens, religious organization or on private property of the founder; there are:

a) government business enterprises (act on the basis of the Charter on the principles of entrepreneurship and are responsible for the consequences of their activities all belonging to him, the rights of economic management of assets);

b) state enterprise (created by decision of the Cabinet of Ministers of Ukraine in the sectors of the economy), which is allowed by law to carry out economic activities only to state enterprises; the main (over 50 %) consumer of goods (works, services) is the state; the conditions impossible free competition of producers or consumers; the prevailing (over 50 %) is the production of socially necessary goods (works, services) which by its terms and nature of the needs, as a rule, may not be cost-effective; the privatization of property complexes of state enterprises is prohibited by law);

c) municipal commercial enterprise (formed by the competent body of local self-government, property on the right of full economic management);

d) municipal non-profit enterprise (the property on the operational administration right);

- *corporate* – formed by two or more founders, e.g., cooperative enterprises or those that are created in the form of business companies and other enterprises, including based on private ownership of two or more persons.

***3. Depending on the number of employees and gross profit from product sales during the year, the companies are divided into:***

- *small* (average accounting number of employees per reporting (financial) year not exceeding 50 persons, and the gross profit for this period does not exceed the amount of over UAH 70 mln.);

- *large* (average accounting number of employees exceeds 250 persons, and the gross profit for the year exceeds the sum over 100 million UAH.);

- *medium* (all other businesses).

The company has the right to establish branches, representative offices, branches and other separated subdivisions, according the question about the placement of such units of the enterprise with the relevant local authorities in accordance with legislation. Such separated units do not have the status of legal entities and act on the basis of provisions, approved by the company.

## **2. The order of creation of the enterprise. The termination of the company.**

***A business entity can be formed by the decision:***

- *owner (s) of the property or authorized by him (them) of the authority;*

*by reorganization (merger, accession, separation, division, transformation) of the current entity;*

*by forced division of the current entity by order of the Antimonopoly bodies in accordance with the Antimonopoly legislation of Ukraine.*

The constituent documents of the enterprise is called a set of documents, statutory forms, under which the entity occurs and acts as a subject of law.

***The constituent documents of the subject of management are:***

- *the decision on its formation or articles of incorporation;*

- *the Charter (position) of the entity in cases stipulated by law.*

***The contents of Memorandum:***

- the obligations of the participants regarding the establishment of a business entity;

- define the order of joint activity on its creation;

- conditions of transfer of his property, the allocation of profits and losses;

- manage the activities of the entity and the participation of the founders;

the order of exit and entrance of new shareholders;

- the procedure for its reorganization and liquidation in accordance with the law;

- other conditions of activities of a business entity as provided by law,

***The contents of the Charter:***

- information about the name and location of the entity;

- purpose and subject of activity;

- the size and procedure of formation of statutory funds and other funds;
- the allocation of profits and losses;
- controls and monitoring their competence;
- terms of reorganization and liquidation of a business entity, and other information.

Common grounds for termination of activities of enterprises of all types is described in article 59 of the Economic code of Ukraine. In the event of bankruptcy procedure for the termination of its activities regulated by the Law of Ukraine «On restoring debtor's solvency or recognizing it bankrupt».

***The termination of the company*** performed by:

- *reorganization (merger, accession, division, separation, transformation);*
- *the elimination:*

- by decision of the owner (owners) or authorized bodies, by the decision of other persons – founders of a business entity or their successors, as well as the decision of the court;
- in connection with the termination of the period for which it was created, or in the case of achieving the purpose for which it was created;
- in case it is declared in the established procedure of bankruptcy;
- in case of cancellation of its state registration in cases stipulated by law.

Cancellation of state registration deprives the company of the status of a legal entity and is the basis for its exclusion from the state registry. The company is considered liquidated from the date of entry in the state register of record about the termination of its activities. Such recording shall be paid after approval of the liquidation balance.

Liquidation of the enterprise is carried out by the liquidation Commission, formed by the owner of the property of a business entity or its representatives.

The body that took decision on liquidation of the entity, establishes the procedure and defines the terms for liquidation and the deadline for submission of creditors claims that may not be less than two months from the date of announcement of liquidation.

The liquidation Commission or other body that conducts the liquidation of an enterprise, locates in a special Supplement to the newspaper «Uriadovy courier» and/or in other official printed edition on state power or body of local self-government at the location of a business entity message on its liquidation and on the procedure and deadlines for statements of claim to creditors and known creditors reports personally in writing.

At the same time the liquidation Commission shall take the necessary measures with respect to collection of accounts receivable of the company which is in

liquidation, and identification of creditors, notice in writing of each of them on liquidation of the entity.

The liquidation Committee evaluates existing property of the entity being liquidated, and calculated with the creditors, draws up a liquidation balance and submits it to the owner or body that appointed the liquidation Commission.

Claims of creditors against the enterprise which is liquidated shall be satisfied from property of the subject, if other is not stipulated by the Economic code and other laws. However, the property for satisfaction of claims of all creditors may not be enough (the presumption of insufficiency of assets), so a General rule of priority of satisfaction of debts by the debtor, which is liquidated. The sequence and procedure of satisfaction of creditors' claims shall be determined in accordance with the law.

Claims that are not satisfied due to the lack of property of the entity, claims that are not recognized by the liquidation Commission if the claimants within one month after receipt of the notice of full or partial rejection of the claim does not go to court with the corresponding claim and the claim in satisfaction of which the court denied the creditor, are extinguished. The property that remains after satisfaction of creditors claims, is used at the discretion of the owner.

### **3. Concepts and types of enterprises.**

Enterprises have the right to associate in industrial, industrial-financial groups and others. These groups of companies, which are defined in the theory of economic law as economic enterprises.

*Association of enterprises* an economic entity formed of two or more companies to coordinate their production, research and other activities to address common economic and social tasks.

Association of enterprises is a legal entity.

#### ***The following types of enterprises:***

*1. Depending on the order of establishment of Association of enterprises can be distinguished:*

- *economic Association* – associations of companies formed under the initiative of enterprises, regardless of their type, which voluntarily merged its business;

- *state or municipal economic enterprises* – Association of enterprises formed by state (municipal) enterprises for the decision of the Cabinet of Ministers of Ukraine, ministries, local authorities, usually in the form of corporations or corporations, whatever the names of enterprises (combine, trust, etc.).

*2. Depending on the organizational - legal forms there are following types of enterprises:*

- *Association* – contractual Association created to permanent coordination of economic activities of the enterprises which have United, by centralisation of one or several production and administrative functions, development of specialization and cooperation of production, organization of common production on the basis of Association of participants of financial and material resources for satisfaction of mainly economic requirements of members of the Association. The Association has no right to interfere in the economic activity of enterprises – participants of Association.

- *Corporation* – a contractual Association established on the basis of a combination of industrial, scientific and commercial interests of the enterprises which have United, with delegation by them of certain powers of centralized regulation of each of the participants in the management bodies of the Corporation.

- *The consortium* – a temporary statutory Association of companies to achieve the participants shared a certain economic goal (implementation of target programs, scientific-technical, construction projects, etc.). In the case of achieving the objectives of creating the consortium will terminate its activities.

- *Concern* – recognized statutory merger of companies and other organizations based on their financial dependence from one or group of members of the Association, with centralization of functions of scientific-technical and production development, investment, financial, foreign economic and other activities. Members of the group gives it some of its powers, including the right to represent their interests in relations with authorities other enterprises and organizations. Members of the group may not simultaneously be members of another group.

*Industrial-financial group* is the Association which shall be established by resolution of the Cabinet of Ministers of Ukraine for a certain period with the purpose of realization of state programs of development of priority branches of production and the structural transformation of the Ukrainian economy, including programs in accordance with international treaties of Ukraine, and also for the production of the final product. In the industrial-financial group is determined as the main enterprise, which has the exclusive right to act on behalf of financial-industrial groups as a participant of economic relations. Industrial-financial group is not a legal entity and not subject to state registration as a business entity. The formation and other issues of industrial-financial groups are determined by the Law of Ukraine «On financial-industrial groups».

*Holding company* – a business entity that owns a controlling stake of the subsidiary company (companies). Between the holding company and its subsidiaries established relations of control – subordination.

The current legislation provides the possibility of creating other forms of associations of enterprises (unions, associations, entrepreneurs and the like), not envisaged by article 120 of the Economic Code of Ukraine.

**Abstracts:**

1. The procedure of formation of private enterprise in Ukraine.
2. The procedure of liquidation of the enterprise in Ukraine.
3. The legal status of public enterprises.
4. The legal status of the utility.
5. The legal status of the holding company.

**Test tasks:**

1. Enterprises depending on the form of ownership are classified as:
  - a) a private company;
  - b) holding;
  - c) state-owned enterprise;
  - d) a small business;
  - e) utility company?
2. What types of companies classified according to the method of forming the statutory Fund:
  - a) the unitary enterprise;
  - b) of the corporate enterprise;
  - c) state enterprises;
  - d) a foreign enterprise;
  - e) enterprises with foreign investment?
3. Correctly named the reason of establishment:
  - a) the decision of the owner;
  - b) the decision of the court;
  - c) reorganization of the existing entity;
  - d) the decision of the local authority;
  - e) the compulsory section of the existing entity?
4. Which of the listed methods of the termination of activity of the enterprise correct:
  - a) own decision of the owner;
  - b) death of the owner;
  - c) the decision of the court;
  - d) the expiration of the license;
  - e) reorganization?

5. Which of the following types of associations of undertakings named correctly:

- a) business associations;
- b) state economic enterprises;
- c) of the Association;
- d) Federation;
- e) Corporation?

**Tasks:**

Task 1. Citizen Litvinenko O. I. appealed to the regional state administration a statement on the state registration of a private company, the subject of activity is implementation of medical practice and the sale of medicines. The district administration refused to register him because of the lack of a license to conduct the enterprise of medical practice and sale in the territory of Ukraine of medicines.

Legitimate whether the position of the district state administration? Explain your answer.

Task 2. Industrial enterprises (extractive, processing, manufacturing of components and machine tool), which provided all the stages of production of sophisticated equipment and joint-stock Bank initiated the creation of industrial-financial group (PFG), having concluded among themselves the General agreement on production of final products. The initiators of the PFG appealed to the Ministry of economy with the corresponding study on the development of PFG and expected solutions.

Enough called action initiators for creation of the PFG? What conditions must comply with PFG?

**Topic 4. The legal status of foreign enterprises and enterprises with foreign investment.**

- 1. The concept and features of enterprises with foreign investment.
- 2. Concept and characteristics of foreign enterprises.
- 3. The establishment of foreign companies and termination of their activities.
- 4. Restrictions of activity of foreign enterprises on the territory of Ukraine.
- 5. Legal regulation the legal status of enterprises with foreign investment and foreign enterprises.

**1. The concept and features of enterprises with foreign investment.**

*The enterprise with foreign investments* – it the company, in the Charter capital of which not less than ten percent is foreign investments (article 116 of the Economic code of Ukraine).

Characteristic *characteristics of enterprises with foreign investment* are:

1) the enterprise corporate type with the participation of domestic economic entities (residents) and foreign investors (they can be: the foreigners, persons without citizenship, not having a permanent place of residence in Ukraine, legal entities established under the laws of another state, international organizations, other States);

2) availability in the Charter Fund of an enterprise foreign investment in certain legal forms (types and forms of such investments are determined by article 2 and 16 of the Law «On regime of foreign investments», article 391, 392 EC) and the amount (not less than 10% of the size of this Fund);

3) the creation of this enterprise can happen through the establishment of (at least one of the founders must be a foreign investor), as well as in the case of any participant – a foreign investor foreign investment; the acquisition of the company status of the foreign enterprise is not connected with the moment of its state registration, and the date of admission of foreign investments on its balance sheet;

4) to the constituent documents of enterprises with foreign investment must meet special requirements. In addition to the information stipulated by the legislation of Ukraine for the relevant organizational and legal forms of enterprises, they should contain information on the nationality of founders of enterprises with foreign investment, information on the amount of foreign investments valued in foreign currency and national currency of Ukraine by agreement of the parties on the basis of prices of international markets or market of Ukraine according to NBU rate;

5) property imported into Ukraine as contribution of foreign investor in Charter Fund of enterprises with foreign investments (except goods for sale or own consumption) is exempted from customs duty. The procedure of passage of such property on the territory of Ukraine is determined by article 18 of the Law of Ukraine «On regime of foreign investments» and the resolution of the Cabinet of Ministers of Ukraine of 07.08.96 G. «On the procedure of issuance, registration and redemption of bills of exchange issued during import to Ukraine of property as the contribution of the foreign investor to the Charter Fund of enterprises with foreign investment and under agreements (contracts) on joint investment activities and payment of import duty in case of alienation of the property»;

6) the products of these enterprises are not subject to licensing and quotation provided they are certified as products of own production in the order established by the Cabinet of Ministers of Ukraine;

7) to the enterprise with foreign investment subject to the national regime of economic management unless otherwise provided by laws and international treaties of Ukraine ratified by the Verkhovna Rada of Ukraine;



8) with the aim of attracting foreign investment, the state establishes guarantees of protection of foreign investors (article 397 of EC, articles 8-12 of the Law «On regime of foreign investments»);

9) to protect the interests of the national economy, the law may establish restrictions on the exercise of certain economic activities by enterprises with foreign investment (economic activities, which belong to the state monopoly).

## **2. Concept and characteristics of foreign enterprises.**

*Foreign enterprise* – a kind of enterprise with foreign investment, the defining characteristic of which are the special requirements to its participants (they can only be foreign investors) and property (foreign enterprise foreign investment should total 100%).

### *Signs of foreign enterprises:*

- 1) is created and operates on the basis of the legislation of Ukraine;
- 2) are the property of the foreign entities (foreigners or foreign legal entities);
- 3) foreign-owned enterprise may be any property, not prohibited by the legislation of Ukraine;
- 4) the existing company can be owned by foreign company only after the complete acquisition of the property of foreigners or foreign legal entities, or jointly;
- 5) the foreign enterprise has its own name in addition to full names may be abbreviated, its seal, Bank account and other details in accordance with the current legislation of Ukraine.

## **3. The establishment of foreign companies and termination of their activities.**

### *Conditions of establishment of foreign enterprises are:*

- the presence (income) on the territory of Ukraine of foreigners and foreign legal entities or the existence of a functioning enterprise acquired in property of these persons.
- creation of a foreign enterprise in the territory or in the industry of management, in which it is not prohibited;
- the documented information about the subject of activity, not prohibited in Ukraine, other information stipulated by the current legislation to create foreign enterprises.

For registration of a foreign enterprise, its founders need to prepare (develop) the articles of incorporation. This set of documents the statutory form under which the enterprise occurs and acts as a subject of economic relations. State registration

leads to the recognition of a foreign enterprise legal person, i.e. the occurrence of his legal capacity.

The subject, goals and directions of its activity a foreign enterprise determines in its Charter; compliance with them and applicable laws it has the right to enter into contracts and other transactions, to engage in any economic activity provided by the Charter in accordance with the EC of Ukraine, and not prohibited by applicable law. A foreign company independently plans the activity and determines the development prospects on the basis of demand for manufactured products, works, services. The products of the company is not subject to licensing and quotas provided that certification of own products in the manner prescribed by the Cabinet of Ministers of Ukraine.

Foreign companies have the right to establish their structural units (branches, departments, representations, other separate subdivisions), which are not legal entities, but have a permanent location on the territory of Ukraine. Based on the requirements of national legislation the conditions of creation and activity of such structural units are regulated by the government. This is necessary in order to prevent the implementation on the territory of Ukraine unprofitable activities, or activities that may violate economic sovereignty of Ukraine. Branches, representative offices and other separate subdivisions of foreign enterprises, which are opened in Ukraine, registered by the Ministry of economy of Ukraine in order, established by article 5 of the Law of Ukraine «On foreign economic activity».

Liquidation and reorganization of a foreign enterprise are carried out in accordance with the requirements of their Charter, EC of Ukraine, antitrust and other applicable law, the decision of the owner or upon the decision of the court or arbitration court.

#### **4. Restrictions of activity of foreign enterprises on the territory of Ukraine.**

Foreign relations of the enterprise with other enterprises, organizations and citizens in all spheres of business arise and are regulated on the basis of contracts. Foreign enterprise has the right to conduct foreign economic activity and the direction of this activity defines itself. The state provides the foreign company with equal legal and economic opportunities with other companies, guarantees the rights and legitimate interests. Intervention in economic and other activity of foreign enterprises by the state, public organizations, political parties and associations without legal grounds is not allowed. Control over the activities of a foreign enterprise is the tax, the state control and auditing service and bodies of other

departments, provided the EC of Ukraine and other state structures that provided by applicable law. The relationships of foreign enterprises with the state administration bodies, local authorities and other bodies constructed in accordance with applicable law.

However, the economic security of Ukraine causes the necessity of preventing access of foreign entities to which the state, by whose laws they are created, in the region of harrow (weapons, engineering and technology), fundamental developments, the maintenance of public order and administration, Finance and monetary policy of law-making. These areas are traditionally not available to foreigners in almost all countries without exception.

Ukrainian legislation also restricts the access of foreigners to certain sectors of the economy, which are: activities of publishers, topographic, geodetic and cartographic activities, insurance activities. Laws of Ukraine may define the territory in which the establishment and operation of foreign enterprises is restricted or prohibited due to requirements of national security of Ukraine. This is usually the border areas, locations of military and other strategic objects. In the case of other States, customs unions or economic groups restrict the lawful exercise of the rights and interests of subjects of foreign economic activity of Ukraine (enterprises, branches or representative offices), bodies of state regulation of foreign economic activities in accordance with their competence have the right to apply adequate measures in response to such actions (article 29 of the Law of Ukraine «On foreign economic activity»).

## **5. Legal regulation of activity of enterprises with foreign investment and foreign enterprises.**

Features of the legal status of enterprises with foreign investment and foreign enterprises shall be determined by articles 116, 117, 390-400 Economic code of Ukraine, Law of Ukraine dated 19.03.1996 «On regime of foreign investments» and also a number of sub-legal acts, including: regulations on the procedure of state registration of foreign investments», approved by the Resolution of the Cabinet of Ministers of Ukraine from 07.08.1996 G.; resolution of the Cabinet of Ministers of Ukraine from 07.08.1996 G. «On the procedure of issuance, registration and redemption of bills of exchange issued during import to Ukraine of property as the contribution of the foreign investor to the Charter Fund of enterprises with foreign investment and under agreements (contracts) on joint investment activities and payment of import duty in case of alienation of the property»; the Provision on an order of attraction of experts to the assessment of property in state ownership, with the creation of enterprises with foreign investment

approved by the Cabinet of Ministers of Ukraine of 20.07.1996, No. 813; Resolution of the Cabinet of Ministers of Ukraine of 05.09.1996 «On approval of the Procedure of definition of production of own production of enterprises with foreign investment» and other regulations.

**Abstracts:**

1. The legal status of the enterprise with foreign investments.
2. The legal status of the foreign entity.
3. The emergence of property rights and obligations of enterprises with foreign investment and foreign enterprises.
4. The exercise of corporate rights of enterprises with foreign investment and foreign enterprises.
5. Forms of joint investment activity.

**Test tasks:**

1. In a foreign company, foreign investment must be not less than:
  - a) 5 %;
  - b) 25%;
  - c) 50%;
  - d) 51%;
  - e) 100%?
2. The enterprise with foreign investment foreign investment shall be not less than:
  - a) 10 %;
  - b) 15%;
  - c) 25%;
  - d) 51%;
  - e) 100%?
3. Restrictions of activity of foreign enterprises on the territory of Ukraine is to prevent their access to the region:
  - a) defence (weapons, equipment and technologies);
  - b) lawmaking;
  - c) maintain public order and control;
  - d) finance and monetary policy;
  - e) agriculture?
4. Signs of foreign enterprises:
  - a) created and operating under the laws of Ukraine;
  - b) created and operating under legislation of a foreign state;

c) foreign-owned enterprise can own any property, not prohibited by the legislation of Ukraine;

d) foreign investment shall not be less than 51 %?

5. Signs of enterprises with foreign investment:

a) this enterprise of corporate type;

b) unitary enterprise;

c) at least one of the founders must be a foreign investor;

d) foreign investment must be not less than 10 %?

### **Tasks:**

Task 1. The Russian company «EUROCEMENT» has acquired 25% of the Ukrainian private enterprise «Baltsem».

Is now the company «Baltsem» foreign enterprise? Justify your answer.

Task 2. The British government sent the Cabinet of Ministers of Ukraine's official proposal for the lease of the integral property complex of the Ukrainian state enterprise «Mashprom», and when he was refused, asked the court for protection of their rights.

1. What decision should stand trial?

2. Who under the current legislation of Ukraine may be a lessee of state and municipal property?

## **Topic 5. Legal status of business entities**

1. The concept and characteristics of business entities.

2. The rights and obligations of participants of economic societies.

3. Concepts and characteristics of joint-stock companies.

4. Characteristics of limited liability and companies with additional liability.

5. Characteristics of full and limited partnerships.

### **1. The concept and characteristics of business entities.**

The main corporate companies in Ukraine are companies which were established in 1991. Business companies as subjects of commercial activities exist in all countries with a market economy. The legal status of economic entities is determined by the Economic code of Ukraine, Civil code of Ukraine, Law of Ukraine «On business associations» and the Law of Ukraine «On joint-stock companies».

**Business companies** - they are enterprises or other economic entities established by legal entities and (or) citizens by combining their assets and from business activities of companies with the aim of making a profit.

Business companies are legal entities.

Founders and members of the Association can be entities, other participants of economic relations, as well as citizens who are not business entities.

The constituent documents of the economic company shall contain information about the type of society, the subject and purpose of its activities, founders and participants, the composition and competence of companies and the procedure for their adopting decisions, including the list of issues requiring qualified majority of votes, other information, and the like.

## **2. The rights and obligations of participants of economic societies.**

### ***The rights of participants of the economic company:***

*- to participate in the management of the Affairs of the society in the manner specified in the constituent documents;*

*- to participate in the profits of the society and get its part (dividends);*

*- obtain information on the activities of the society;*

*leave provided by the founding documents of the order from the society.*

### ***Obligations of participants of the economic company:***

*- to adhere to the requirements of the constitutive documents of the company, to implement the decision of its management bodies;*

*- to make contributions (pay for shares) in amount, order and by means, as is stipulated by the constituent documents.*

Contributions of participants and founders of the economic company may be homes, structures, equipment and other material values, securities, rights to use land, water and other natural resources, houses, buildings, and other property rights, including property rights to objects of intellectual property, means, including in foreign currency.

Do not use for formation of the Charter Fund budget funds, funds obtained on credit and bail.

The sum of the contributions of founders and participants of the economic company is the authorized Fund of the company.

In the company creates the reserve (insurance) Fund in the amount provided by the constituent documents but not less than 25% of the Fund and other funds. The size of annual deductions in reserve (insurance) Fund is foreseen by the constituent documents, but may not be less than 5% of the amount of profit companies.

### ***A business company is the owner of:***

*- property, transferred to it the property of founders and participants as the contributions;*

- products produced as a result of economic activities of the company;
- income received from economic activity;
- other property acquired on grounds not prohibited by law.

The management of business companies realize its bodies and officials the composition and procedure of election (appointment) of which is carried out in accordance with the type of society.

*Officials of management bodies of the company* recognized by the Chairman and members of the Executive body, the head of the audit Commission, and societies, which created the Board (Supervisory Board) – the Chairman and members of this Council. Officials of the economic company may not be persons, service or other activities which are recognized by the Constitution and laws of Ukraine is incompatible with these functions, as well as persons who by the decision of the court prohibited from engaging in certain activities or hold certain positions.

### 3. **Concepts and characteristics of joint-stock companies.**

#### ***The types of business entities:***

- *Act on the basis of the Charter:* joint-stock companies, companies limited liability companies additional liability.

- *Act on the basis of the contract:* full partnership, limited partnership.

***Joint-stock company*** – a business company the Charter capital of which is divided into a number of shares of equal nominal value the corporate rights under which certified the shares. Shareholders do not answer for obligations society and bear risk of losses connected with activities of society, only to the extent of their shares.

#### *Types of joint stock companies.*

In accordance with article 5 of the law of Ukraine «On joint stock companies» joint stock companies according to the type are divided into public joint stock companies and private joint stock companies:

- *public* is a society in which the number of participants exceeds 100 shareholders and which may perform public and private placement of shares;

- *private* – this society, whose quantitative composition is not more than 100 shareholders and are not entitled to perform public offering of its shares.

Public offering of shares is the distribution of shares through trading on the stock exchanges or the distribution of shares by the shareholders without consent of other shareholders and society. The change of the company from private to public, or Vice versa, is not a conversion.

The establishment of a joint stock company governed by the Law of Ukraine «On joint stock companies» (article 9). *The founders of joint stock companies*

recognized: the state in the person of the body authorized to manage state property, a territorial community in the person of the body authorized to manage communal property, as well as physical and legal persons.

*The creation of a society is carried out in such stages:*

1. the adoption by the meetings of founders of the decision on the establishment of joint stock companies and on the closed (private) placement of shares;
2. submission of an application and all necessary documents for registration of issue of shares to the State Commission for securities and stock market;
3. registration by the Commission of the issue of shares and the issuance of a temporary certificate of registration of the share issue;
4. the assignment of international securities identification number of securities;
5. conclusion with genticorum service agreement issue of shares or with the Registrar on keeping the register of owners of registered securities;
6. closed (private) placement of shares among the founders of the society;
7. pay the founders the full value of the shares;
8. the approval of the constituent meetings of the society, the result of a private placement of shares among the founders, approval of the company's Charter;
9. registration of the company and its Charter in the state registration authorities;
10. the performance of the State Commission on securities and stock market of the report on results of placement of shares;
11. registration by the State Commission of the report on results of closed (private) placement of shares;
12. obtaining the certificate of state registration of shares issue;
13. the results of the founders of the society of the documents confirming the right of ownership of shares.

Actions that violate the procedure for creating joint-stock companies, established by law, is grounds for dissolution of the company, at the suit in the court of the State Commission on securities and stock market.

*The founders of joint stock companies* are the individuals who perform legal actions concerning the establishment of companies. They are responsible to those who have subscribed for shares and before third parties for obligations that arose at the time of registration.

*Participants* are the people that perform the responsibilities of owners of shares to the society and shareholders in front of a joint stock company.



The constituent Assembly of the founders shall not be held later than 2 months from the date of completion of the subscription for shares. In the case of missing specified period a person who has subscribed for shares has the right to demand return of the paid part of the cost of the shares.

***The constituent Assembly*** – a body whose jurisdiction included the creation of a society. Eligible recognized meeting, with the participation of individuals who have signed up more than 60% of the shares to which subscribe.

***The constituent Assembly carry out legal acts concerning the founding of the society by a vote on the principle: one share – one vote:***

- 1) the decision on the establishment of joint-stock companies;
  - 2) approval of the company's Charter;
  - 3) election of the Board of joint stock company (observation Council), Executive (Board) and controlling (audit Commission) bodies.
  - 4) decision on the establishment of subsidiaries and representative offices;
  - 5) granting privileges to the founders at the expense of joint-stock companies.
- Decisions on these matters should be taken by a qualified (3/4) majority of votes.

***Constituent Assembly to decide the following questions:***

- 1) accept or reject the offer of subscription for shares that exceed the number of shares for which were announced subscription;
- 2) reduce the size of the Charter capital in the cases when in due time the subscription for the shares covered by the amount specified in the message;
- 3) approve the valuation of contributions in kind;
- 4) decide on approval of agreements concluded by the founders prior to the creation of joint stock companies and the like;

The total size of the authorized Fund of joint stock companies, as well as the nominal value and the number of shares determined by the shareholders in accordance with the purpose, the subject of activity. However, it should be no less than the equivalent of 1250 minimum wages.

***The increase of the authorized Fund*** possible only under condition of full payment by shareholders of all previously issued shares by:

- additional subscriptions for shares;
- increase of the nominal value of already issued shares;
- exchange bonds for shares.

***The reduction of statutory Fund is possible by:***

- reduction of the nominal value of the issued shares;
- reducing the number of shares by redemption of shares from their owners for the purpose of cancellation of these shares.

The reduction of statutory Fund is impossible in the presence of objections of creditors.

In addition to the reserve Fund in the joint-stock company must have a *Fund the payment of dividends*, what is formed from the net profit of the company.

The legal regime of the shares is regulated by the Law of Ukraine «On securities and stock market».

*Share* securities with no fixed maturity, which certifies the share in the authorized Fund of joint-stock companies, confirms membership in joint stock society and right to participate in the management of them, entitles its owner to receive part of the profits in the form of dividends, and to participate in the distribution of property upon dissolution of the company.

On the grounds of class, the law determines the action:

- *preferred*;
- *simple*.

*Preferred shares* shares with preferential rights of participation the property. The specific rights of preferred shareholders determine the General meeting of the company. The description of such rights contained in the Charter of the company.

*Privileges are, in the first place:*

1) benefits to receive dividends, namely: the annual dividend amount is fixed in percentage of the nominal value of the shares and is paid regardless of the annual profit of the company. If the profit is not enough, the dividend will be paid from the reserve Fund.

2) Supplement its owner if the amount of dividend per preference share will be below the dividend per ordinary share;

3) priority participation of the owner of the preferred shares in the distribution of liquid assets, which is stopped.

Since the owners of preference shares take on the risk as entrepreneurs is less than the owners of ordinary shares, they have limited management rights. As a General rule, preferred stockholders are not entitled to participate in the governance of society, but the statutes may determine the range of issues involving this category of shareholders.<sup>2</sup>

The issue of preferred shares shall not exceed the amount that is 25 % of the authorized Fund of the company (article 20 of the Law of Ukraine «On joint stock companies»).

Depending on prescribed by statutes of limitation of the rights alienation (transfer) release:

- *registered shares*. Citizens have the right to be the owners, as a rule, shares. The appeal of the registered shares recorded in the register of owners *registered*

*securities* what is society. The registration is subject and the transfer (transfer) of shares to other persons, that is, the transfer of rights of participation;

- *bearer shares* – turn freely, i.e. without undocumented procedures. Joint-stock company records in the book of registration the total number of bearer shares. According to article 20 of the Law of Ukraine «On joint stock companies» in 2010, all company shares shall be registered. Shares of companies exist exclusively in a documentary without form.

*The legal regime of dividends* – the procedure for determining the amount, ads and payments to shareholders of income shares of net profit of joint-stock companies.

*Dividend* – that part of the net profit of the joint stock company which is subject to allocation and appropriation by the shareholders in proportion of their shares; this is also the amount (value, size) net profit shareholder for one share.

***In the statutes of the societies are determined such elements of the legal regime of dividends (individual items):***

- the dividend amount (per ordinary share determined by the General meeting of the society on the proposal of the management Board);

- repayment period;

- form of dividend payment (cash, Bank transfer, etc.);

- the beginning of the accrual (dividends accrued from the date of registration of a person as a shareholder in the register of shareholders of the company in proportion to the paid for the shares amount);

- dividends (not higher than recommended by the Board);

the dividend payments of the retired and new shareholders (in case of purchase of shares on the secondary securities market, the dividends for the last period are paid to a shareholder registered in the company at the time of dividend payment).

Economic functions and the right company as an entity in relationship to implement controls.

***The main General bodies joint stock companies are:*** the General meeting of shareholders is the highest governing body of the company, the Board (Directorate) of the company, headed by Chairman of the Board or Director, and ***two of the Supervisory authority*** – the Supervisory Board and the audit Commission.

*Basic principles of management of joint-stock company:*

1. The distinction between legal norms (legislative, statutory) functions of the owner (shareholders) and the functions of centralized management of the society.

2. The centralization of the management of the current activities of the company in the hands of a competent Executive body (*the Board of the company*) headed by a leader who acts without instructions on behalf of the company.

3. High and constant current control of the shareholders (as the founders and co-owners of companies) for managerial and financial-economic activities of government. Joint-stock company, as a General rule, has two Supervisory bodies – the Supreme audit (*Supervisory Board*), responsible for the monitoring of the management activities of the management Board and Supervisory (*audit Commission*) who controls financial and economic activities of the management Board and is elected from among the shareholders.

The management bodies of a joint stock company are the General meeting of shareholders, the Supervisory Board.

*The Supreme body of joint stock company* - the General meeting, considering the definition of the basic directions of activity of joint-stock companies, approval of its plans and reports on their implementation, amendment of the articles of Association, election and recall of members of the Board of Directors of the company, members of Executive body and revision Commission, approval of the annual performance of the company and other matters stipulated by the article 33 of the Law of Ukraine «On joint stock companies».

*The Executive body of the joint stock company* is the Board. It decides the activities of the society, except those referred to competence of the General meeting and the Supervisory Board. The Chairman of the Board is entitled without authorization to perform actions on behalf of the society, to sign contracts, to represent the company in government bodies, to act on his behalf in court, the economic court (article 58 of the law of Ukraine «On joint stock companies»).

## **2. Characteristics of limited liability and companies with additional liability.**

*A limited liability company* is a legal entity, which has statutory Fund divided into parts, the size of which is determined by the constituent documents, and is responsible for its obligations only by its property.

Shareholders who fully paid their contributions, bear the risk of losses associated with the company's activities within their contributions.

The size of the Charter Fund of a limited liability company must be not less than the equivalent of 100 minimum salaries.

*The Supreme management body of a limited liability company* are **meeting of participants**. *The Executive body* is **Directorate** (a collegial body), headed by the Director General or Director (the sole authority). Members of the Executive of the authority may be persons who do not belong to the number of participants. The

Directorate is accountable to meetings of members and shall carry out implementation of their decisions.

***Society with additional responsibility*** is a legal entity, the authorized Fund of which is divided into parts specified in the Foundation documents of sizes and which is responsible for its liabilities with its own property, and in case of his failure members of the society have additional joint liability determined in the constituent documents of the same fold to the contribution of each participant.

## **5. Characteristics of full and limited partnerships**

***Full society*** is a legal entity, all of whose members in accordance with the agreement concluded between them carry out business activities on behalf of the society and have an additional joint and several liability for the obligations of society with all its assets.

The conduct of the Affairs of a full partnership is by mutual agreement of all parties by one or more of them, who act on behalf of the company. In the latter case, the scope of authority of participants is determined by the instruction, which should be signed by other members of society. Participants who had been entrusted with the conduct of the Affairs of a full partnership must provide to other parties upon their request complete information about the actions that are performed on behalf of and in the interests of society.

***Kommanditnoe a society*** is a business entity in which one or more parties to carry out on behalf of the company business and are bound by the obligations of the additional joint and several liability with all its property on which under the law may be an application recovery (full members) and other participants take part in the activities of the society through their contributions (contributors).

### **Abstracts:**

1. The legal status of joint-stock companies.
2. The legal status of a limited liability company.
3. The legal status of companies with additional liability.
4. The legal status of a limited partnership
5. Comparative analysis of property liability of founders of different types of business entities.

### **Test tasks:**

1. Which business companies operate on the basis of the Charter:
  - a) joint stock company;

- b) holding;
- c) the limited liability company;
- d) command company;
- e) full community?

2. The concept of society is given: «a business company the Charter capital of which is divided into a number of shares of equal nominal value the corporate rights under which certified the shares. Shareholders do not answer for obligations society and bear risk of losses connected with activities of society, only to the extent of shares owned by them»

- a) a limited partnership;
- b) joint stock companies;
- c) full community;
- d) a limited liability company;
- e) companies with additional liability?

3. On the basis of class shares are divided into:

- a) common shares;
- b) registered shares;
- c) bearer shares;
- d) preference shares?

4. What are the types of privileges granted to preferred stocks:

- a) the right to receive dividends;
- b) privilege in voting at the founding meeting;
- c) privileges while performing their property obligations;
- d) privileges in the division of assets of a liquidated company?

5. The size of the Charter Fund of a limited liability company must be not less than:

- a) 50 minimal wages;
- b) 100 minimal wages;
- c) 150 minimal wages;
- d) 200 minimal wages;
- e) 250 minimal wages?

### **Tasks:**

Task 1. The owner of the private enterprise «Agat» has decided to reorganize it into a joint stock company.

What needs to be done to the owner for the implementation of the reorganization?

Task 2. Taking the decision to create a joint stock company, the founders must solve the following questions:

1. What kind of society - public or private - gives you the opportunity not to exceed the quantitative composition of the 25 shareholders?
2. Can be freed by someone from the founders from the payment of the obligatory part of its stake in state registration of the company?

### **Topic 6. Legal status of non-commercial entities.**

1. The concept of non-commercial economic activities.
2. The types of non-commercial economic activities.
3. Entities non-profit economic activity.

#### **1. The concept of non-commercial economic activities.**

At the same time with the typical entities that operate in the field of production, performance of works, provision of services or the satisfaction of material needs, in the economic law relations take part of the organization, not created to carry out the functions of business. Their purpose is the fulfillment of a charitable, cultural, scientific, management functions, functions for health of citizens, satisfaction of their spiritual and other intangible needs, to protect the rights and legitimate interests, and the like.

The difference between the two groups of subjects is, first and foremost, the purpose of their core business: for business organizations is the business process that is completed by receipt of payment for goods manufactured, services provided, whereas for non-profit organizations is an intangible human interactions: socio-cultural, scientific, managerial activity which is funded externally.

*Are a non-profit organization* created for the implementation or the organization of economic activities, and to perform other activities funded externally, since it does not act as a commodity and do not provide sustainability. For the solution of its main tasks a non-profit organization can participate in the economic law relations, thus becoming subjects of economic law.

They are usually, to meet sociocultural, scientific, spiritual needs, or the implementation of management functions and are always *non-profit entities of economic law*.

***According to the current legislation the managing organizations are divided into:***

- *the subjects of entrepreneurial activities (commercial organization)*, the main purpose of which is profit (companies and their associations, economic societies, production cooperatives);

- *non-commercial (nonprofit) organizations* that do not have primary goal of profit and not distribute it among its founders (commodity exchanges, consumer cooperatives, chamber of Commerce and the like).

***Non-profit management*** is an independent systematic economic activity that is carried out by business entities and aimed at achieving economic, social and other results without the purpose of profit.

Non-commercial business activities performed by business entities state or municipal sectors of the economy, in activities where the prohibited business, as well as other entities that carry out economic activities in the form of business is prohibited by law.

Can't carry out non-commercial economic activities of bodies of state power, bodies of local self-government, their officials.

## **2. The types of non-commercial economic activities.**

Non-economic organizations should be established in organizational and legal forms not contradicting the legislation. The most established in practice, are such ***legal form non-profit organizations:***

- *Association of citizens* – it is a voluntary public formation created on the basis of common interests for the implementation of citizens ' rights and freedoms. Citizens Association, regardless of its title (movement, Congress, Association, Fund, Union, etc.) recognized political party or public organization. The legal basis of economic activities of citizens ' associations in Ukraine is the Law of Ukraine «On associations of citizens» from 16.06 1992. Members of political parties may only be citizens of Ukraine who have reached 18 years of age. Members of public organizations except for youth and children, may be persons who have reached 14 years of age. The age of members of youth and children's public associations is determined by their statutes within the limits prescribed by the laws of Ukraine (article 12 law of Ukraine «On associations of citizens»).

- *religious organization* formed to meet the religious needs of citizens to profess and disseminate the faith and shall, in accordance with their hierarchical structures, elects, appoints and replaces the staff in accordance with its Charter (position). Religious organisations in Ukraine are religious communities, departments and centers, monasteries, religious brotherhoods, missionary societies, spiritual educational institutions, and enterprises which comprise the above-mentioned religious organizations. The legal status of these organizations, including their economic and legal status is enshrined in the Law of Ukraine «On freedom of conscience and religious organizations» from 23.04. 1991;

- *charitable or other nonprofit Fund* – this is an organization that has membership and created for achieving social, charitable, cultural, educational or other socially useful purposes through the use of the property transferred by the founders in



her property. The legal status of the charitable funds governed by the Law of Ukraine «On charity and charitable organizations» from 16.09. 1997;

- *institution, including budget and* this is a non-profit organization created by the owner to provide socio-cultural services, the implementation of management or other such functions, and is funded by them entirely or partially (libraries, museums, hospitals, sometimes universities, academic research institutions, the Executive authorities and local self-government, courts, prosecutors and the like), which causes the need of regulation of their activities by numerous normative legal acts;

- *a non-profit Association of legal entities (Association, Union).*

### **3. Entities of non-profit economic activity.**

Association of citizens, most religious organizations and non-profit Association of legal entities is built on the basis of membership, devoid, however, through their non-profit corporate status of the property item.

Non-profit foundations, and institutions belong to organizations that are not membership-based, that is they are composed of others. all the above mentioned varieties *non-economicx* organizations, except institutions, may be the owners of the property transferred by founders (participants), and purchase it in the course of activity. Institution property, generally secured by a limited property right – the right of operational management.

A non-profit organization may be granted status of a legal person, have a special business personality and to use their assets exclusively for the purposes stipulated by the constituent documents.

Often in economic relations non-profit organizations engage in the process of consumption of the results of economic activities of other actors, that is, at the conclusion of contracts on acquisition (supply) for them certain products, perform certain work or provide services. But consumer business transactions is not exhausted by the content of their economic personality: if permitted by the founding documents, they can produce goods (farms, educational-production workshops, and the like) to perform the work (e.g. research and development), providing services (educational, medical, cultural, etc.). Moreover, since such activities can be organized as a business, it is subject to the legal norms of the relevant business, but the profit is not distributed among the founders, and should be spent on the main objectives and development of material base of the organization.

In the current legislation there are almost no restrictions for non-economic organizations (except political parties, public authorities) for the purchase and sale of

securities, participation in economic societies, the creation of subsidiaries, are necessary to achieve the statutory goals.

Certain activities are considered legal persons can only be performed on the basis of licenses in compliance with the Law of Ukraine «On licensing certain types of economic activity» from 01. 06. 2000 these types of activities include: medical practice, providing educational services General, vocational and higher educational institutions, recreational and sports activities.

**Abstracts:**

1. The order of creation of the charitable organization.
2. The legal status of social organization, as a non-profit entity of economic law.
3. State registration of a political party.
4. Specifics of taxation of non-profit entities economic law.
5. The limits of economic and legal responsibility non-profit of the subject of economic law.

**Test tasks:**

1. What non-economic entities prohibited by the legislation of Ukraine to be composed of foreigners and persons without citizenship:
  - a) religious organizations;
  - b) political parties;
  - c) charities;
  - d) public organizations;
  - d) children's and youth organizations?
2. The concept of a non-economic subject given: «this is an organization that has membership and created for achieving social, charitable, cultural, educational or other socially useful purposes through the use of the property transferred by the founders in its property»:
  - a) a religious organization;
  - b) budgetary institution;
  - c) the charitable Fund;
  - d) a public organization?
3. Age of members of political parties should be not less than:
  - a) 18 years of age;
  - b) 21 years;
  - c) 25 years;
  - d) 27 years?

4. Business organizations are divided into:

- a) commercial organizations;
- b) non-commercial organizations;
- c) non-profit organization;
- d) government agencies?

5. The concept of a non-economic subject given: «a non-profit organization created by the owner to provide socio-cultural services, the implementation of management or other such functions, and is funded by them wholly or partly»:

- a) the budget Agency;
- b) a non-profit Association of legal entities (Association, Union);
- c) a charitable or other nonprofit Foundation;
- d) Association of citizens;
- e) a religious organization?

### **Tasks:**

Task 1. Four citizens of Ukraine aged from 12 to 19 years old decided to create a youth organization for the joint implementation of their specific social objectives. To you they turned as to a lawyer about these questions:

1. What age may be founders of youth organization? 2. Which state bodies are engaged in registration of youth organizations?

Task 2. A citizen of the Czech Republic švejk V. filed an application to political party of Ukraine, «Batkivshchyna» with a request to take him in as a member of the party. When he was refused, he appealed to the court for protection, as he believed violated rights.

What decision should stand trial? Explain your answer.

### **Topic 7. Legal regulation of banking activities and credit-settlement relations.**

1. The concept and characteristics of the banking system in Ukraine.
2. Feature of credit relations.
3. Form of credit.
4. Cash and non-cash payments in economic activities.

#### **1. The concept and characteristics of the banking system in Ukraine.**

**Banks** - it is the financial institutions, functions of which are attraction in deposits of monetary funds of citizens and legal persons and placing of the mentioned

funds on its own behalf, on own conditions and on own risk, opening and maintaining Bank accounts of individuals and legal entities.

Banks can function as a universal or as a specialized savings, investment, mortgage, settlement (clearing).

The banking system of Ukraine consists of the National Bank of Ukraine and commercial banks that are incorporated and operate in the territory of Ukraine in accordance with the law.

*The national Bank of Ukraine* - the Central Bank of the state, whose main function is to ensure the stability of the monetary unit of Ukraine - hryvnia. The legal status of the NBU is defined by the Law of Ukraine «On the National Bank of Ukraine».

Banks are created in the form of joint stock companies and cooperative Bank.

With the aim of protecting the interests of customers and ensure the financial reliability of banks the Law of Ukraine «On banks and banking activities» set the minimum size of the authorized capital in the amount of from 1 to 3 million euros, depending on the locality of the Bank. Banks are prohibited activities in the sphere of material production, trade and insurance. Banks, as a rule, are unable to own real property worth more than 25% of the capital of the Bank. In addition, the Instruction on the procedure of regulating the activities of commercial banks, approved by NBU Board resolution of April 14, 1998, set prudential standards for activities of banks.

State registration of banks, the NBU provides a 3-month period from the date of granting the full package of documents specified in article 21 of the Law of Ukraine «On banks and banking activities». The Bank acquires the status of a legal person from the moment of entering it into the State register of banks. The Bank has the right to carry out banking activities only upon obtaining a banking license issued by the NBU.

The main types of banking transactions are Deposit, settlement, credit, factoring and leasing operations.

The process of accumulation and redistribution of temporarily free resources is credits. From the economic perspective, the loan can be described as the social relationship between the lender and the borrower about reverse cost movement in which there is a transfer by the lender of the loaned value to the borrower on the basis of return and in the interests of public needs.

## **2. Feature of credit relations.**

*Loan relationship* is regulated by rules of law independent of the kind of relationship that arise in the redistribution of material resources between participants of property turnover concerning the provision of funds or material assets for a

specified period or deferred payment on condition of the return and payment in the form of interest on the loan.

Requirements as to the form and order of conclusion (amendment, termination) of the loan agreements is provided by article 6 of the Law of Ukraine «On financial services and state regulation of financial services markets» dated 12 July 2001 Loan agreement is between the borrower and the lender in writing, specifies the purpose, amount and term of the loan, the conditions and procedure of issue and maturity, types of collateral obligations of the borrower, interest rates, procedure of payment for credit obligations, rights and responsibilities of the parties regarding the issuance and repayment of the loan and cannot change unilaterally.

The procedure for the conclusion and the requirements of contracts of Bank credit is enshrined in the Economic code of Ukraine, the position of the NBU on loans, approved by the NBU Board resolution dated 28 September 1995, For the loan, the borrower provides to the Bank a petition (request), constituent documents, certificates of the banks on the balances in the accounts and outstanding loans, the feasibility study requirements of the credit and sources of repayment.

To reduce the risk the Bank grants a loan to the borrower in the presence of guarantees of solvency of a business entity or bail out another Bank, the collateral owned by the borrower of the property under other warranties. To this end, the Bank has the right to examine the condition of economic activity of the borrower, his solvency and to predict the risk of default on the loan.

The Bank credit contract is consensual and bilateral.

*The subjects of credit relations* can be legal and physical persons. *The lender* is the subject of the credit relationship, which provides funds to the borrower for a certain period. The borrowers are legal entities and individuals that have a lack of own funds.

*The object of credit relations* is that benefit, which is aimed at achieving social and economic relations through the implementation of the rights and duties of its members.

### **3. Forms of credit.**

#### ***Forms of credit:***

*Trade credit* - is the credit provided by one business entity to another on a contractual basis in real form at the expense of temporarily free resources on the terms of repayment, urgency and payment, usually in the form of deferred payments.

In the Law of Ukraine «On taxation of profits of enterprises» trade credit is defined as the transfer of goods in property to the terms of a deferred final calculation of for a certain term and under percent.

***Loan in cash*** is the loan granted, as a rule, credit institution on a contractual basis by cash or non-cash funds on terms of repayment, urgency and payment. In the laws of Ukraine «On financial services and state regulation of financial services markets», «On taxation of profits of enterprises» the loan in cash as an exclusive function of banks and non-Bank credit institutions (pawnshops, credit unions, etc.), name of the financial loan.

A ***Bank loan*** (article 2 of the Law of Ukraine «On banks and banking activity») is any Banks obligation to provide a certain amount of money, any guarantee, any obligation to acquire the right to claim the debt, any continuation of the term of the debt that is granted in exchange for commitment of debtor to return the debt and to pay interest from the amount owed.

According to section 13 of the Regulations of the NBU on loans none of the loans may not exceed 25% of own funds of the Bank. The total size of issued credits may not exceed eight times the amount of own funds of the Bank. In accordance with clause 21 noted the law prohibited loans to cover the losses of economic activity of the borrower, and also on formation and increase of Charter Fund of banks and other business entities.

***Types of Bank loans:***

***Consortium loan*** - appointed authorized Bank that acts in the interests of the Bank consortium, carrying out credit borrowers.

***Overdraft*** - the Bank undertakes to grant the borrower monetary funds on credit by paying from the current account of the borrower payment documents in the amount that exceeds the balance of borrower's own funds in the account, within the limit defined by the credit agreement.

***Current account credit*** - where the Bank assumes the payment of all current obligations of the customer regardless of the balance on the current account for the period and takes into account their requirements to the client in a special account. Repayment shall be the amount calculated as a result of netting of mutual claims between the Bank and the client on the appointed date. In contrast to the overdraft under the contract the loan over due to the parties of the term does not occur in charging for every single case of over the balance on the account.

***Forfaiting*** - lending to the exporter by buying at a discount to a specialized firm to forfeiter of promissory notes issued (accepted) importer. Forfeiter assumes the commercial risk associated with the insolvency of the importer. Feature of Forfaiting is that when you purchase bill discount is a certain amount throughout the loan period does not change despite the change in credit interest rates on the capital market.

*Mortgage loan* (in accordance with clause 40 of the Regulations on lending) is a special form of economic relations concerning the provision of loans secured by real estate.

One of the banking operations is to attract *deposits (cash contributions)* - means of available or cashless form in national or foreign currency, placed by customers on their personal accounts with the Bank on contractual basis for a fixed term or without specifying such a period, and are payable to the depositor at a specified time or on demand with accrued interest due.

#### **4. Cash and non-cash payments in economic activities.**

The legal basis of relations between economic entities on the opening and operation of Bank accounts is the Law of Ukraine «On payment systems and money transfer in Ukraine» of 5 April 2001, as well as instruction «On the procedure of opening and using accounts in national and foreign currencies» approved by the NBU Board resolution dated 18 December 1998, the instruction «On cashless settlements in Ukraine in national currency» approved by the NBU Board resolution of March 29, 2001.

The conditions of operation of Bank account fixed in the contract that is concluded between the Bank and a participant of clearing and settlement services.

The Bank account agreement the Bank undertakes to open the company to the customer current and other accounts to count on these amounts, which are received from the client transfer funds to the proper client: on behalf of the client, and in cases provided by law, without such order, to deduct the appropriate amount from the customer account to account for them to the beneficiaries ' accounts; accept from the client and provide him or on his porucheniyyu cash. The client undertakes to adhere to the contract and the instructions of the NBU regulations.

For opening an account required documents: application form, duly attested copies of certificates of state registration of constituent documents, documents on the capture of the person on the account in tax authorities and pension Fund, the social insurance authorities, proof of statistical codes, the order (minutes of the meetings of the founders) on the appointment of the Director and chief accountant, card with samples of signatures and seal.

Bank account agreement - a consensual, bilateral, perpetual, paid.

Current accounts are opened in national and foreign currencies.

The estimated relationship is settled law special circle of public relations of a procedural nature that allow you to transfer-receive funding in diverse financial obligations.

**Cash payments** is the way making payments in which the payment is paper money or metal coin; is governed by the Law of Ukraine «About application of registrars of settlement operations in sphere of trade, public catering and services» dated July 6, 1995, as amended by the Law of 1 June 2000 and by the Regulation on conducting cash transactions in national currency in Ukraine, approved by NBU Board resolution of February 19, 2001

The businesses in the cash transactions in the sphere of trade, public catering and services are required to use the duly registered registrars of settlement transactions (hereinafter - PPO), that is, the device or software and hardware with the implemented fiscal functions, as well as the work with the number of estimated receipts and accounting books settlement transactions.

Regulations on conducting cash transactions is mandatory for all existing on the territory of Ukraine legal entities (except banks and authorities communication) irrespective of patterns of ownership and activity, as well as individuals – entrepreneurs.

The entities that have current accounts in banks, are obliged to keep the funds in these accounts. The receipt of cash are from current accounts in banks in the decorated check book. The cash should be spent exclusively for certain purposes in check.

The cash transactions of business entities among themselves and with citizens can be at the expense of the means received from banks and the proceeds received from realization of goods (works, services), other cash income (for example, the contribution of founders to the authorized Fund of the enterprise).

The payment amount cash one business entity to another business entity should not exceed 3 thousand UAH. within one day, regardless of the number of payment documents. However, the number of entities that can be the calculations throughout the day, is not limited. Payments in excess of the reported amounts should be made solely in cash. The action of this rule does not apply to payments of economic entities with citizens.

Businesses are required to adhere to the limit of cash balance in cash - the maximum amount of money that may be in the ticket office of the company at the end of the day and established by the Bank in accordance with regulations of the NBU and with the features of economic activities of the enterprise.

***Form of cash:***

- *calculations with use of the RRO;*
- *calculation using settlement record;*
- *calculations using the cash voucher;*
- *calculations with the use of profitable cash order;*
- *calculations using the sales receipt.*



***Non-cash payments*** - this method of acceptance-transfer of the cash equivalent without the involvement of cash, that is, through a Bank transfer a certain amount from the payer's to the payee's account.

Payment is implemented by the instructions of the payer Bank, the implementation of which is an additional service for maintaining funds on current Bank accounts.

Legal regulation of clearing settlements is carried out by the NBU Instruction about clearing settlements.

*The principles of non-cash payments:*

1. Cashless payments through the banking institutions.
2. Prohibition of payments to one person at the expense of the other.
3. Payments are made only when the payer's account has available funds or a Bank loan.

4. Withdraw funds from customers accounts is carried out only on the instruction or with their consent (acceptance), with the exception of the forced write-off (recovery) on decisions of the judiciary, the Executive inscriptions of the notary and in the cases established by laws of Ukraine and withdrawal of funds from accounts of payers on the initiative of the recipient in the case of contractual agreements between the payer and the recipient.

*Settlement documents* are documents that are used by participants of settlement operations for registration of transfer (of funds) from the payer to the recipient.

The documents for translation, except for settlement documents, and the documents to transfer cash, interbank settlement documents, clearing claims and other payment instruments.

***Bank payment instrument*** is a tool that contains the necessary details (identification of the Issuer, payment system used, and usually the recipient), which is used in the transfer of funds or other banking services.

The types of payment instruments: payment order, payment request, request-orders, promissory notes, cheques, Bank payment cards and the like.

***Forms of cashless settlements:***

- *Calculations with use of payment orders* - providing the payer serving it to the Bank in writing executed assignment to transfer a certain amount from your account to the account of the payee.

- *Calculations with use of payment request-orders* is a form of payment, which is carried out by means of the combined document, which consists of two parts: the upper claim of the recipient of funds directly to the payer to pay the cost of sold products (works, services); lower - instruction of the payer to Bank serving it to transfer funds from your account to the payee's account.

*Calculations using the calculated check* - the payer gives the payee a written order to support payer Bank to pay the payee noted on the check amount.

*Payments by letter of credit* is the instrumental form of settlement, in which the issuing Bank (the Bank that opened a letter of credit) on behalf of a client (applicant of letter of credit) is obligated to make payment to the beneficiary or to give authority to another Bank (executing Bank) to make this payment, subject to obtaining stipulated in the credit documents (usually shipping documents that confirm the fact of fulfilment by the beneficiary of commodity obligations to the payer).

- *Forced recovery (write-down) of funds* - in the cases established by laws of Ukraine, the Bank performs payments from the payer's account without his or her consent on the basis of payment requirements of the recipient. It is on the letterhead of the payment request.

*Payments in the form of a debit* - the Bank implements the payment request initiated by the recipient to execute an agreement between the payer and the beneficiary embodied in the concluded between parties contracts.

- *Calculations based on the offset of mutual debts* - mutual obligations of debtors and creditors to each other are repaid in equal amounts, and the difference is the payment on a common basis, using a payment order payment request-order cheque or bill of exchange.

*Payments by bill of exchange* is a form of settlement, in which instead of a monetary obligation based on the source of commodity relations, the participants of the calculations make the unconditional obligation of one person to pay another, after the date a certain amount.

*Payments in the form of a collection* - the payee instructs the merchant to his Bank to cash the payment from the payer on the basis of commercial documents or other instructions.

### **Abstracts**

1. The legal status of the National Bank of Ukraine.
2. Licensing of banking activity in Ukraine.
3. Especially the establishment of banks with foreign capital.
4. Deposit operations of the banks.
5. Operations on current accounts in foreign currency.

### **Test tasks:**

1. The banking system of Ukraine consists of:
  - a) the National Bank of Ukraine;

- b) commercial banks;
- c) foreign banks;
- d) foreign public banks?

2. The main types of Bank operations are:

- a) Deposit operations;
- b) leasing transactions;
- c) factoring;
- d) investment transactions?

3. What form of cash are correct:

- a) calculations with use of the RRO;
- b) calculations using the cash voucher;
- c) insurance payments;
- d) calculations using the receipt?

4. Which of the principles for cashless payments are correct:

- a) the use in the calculation of profitable cash order;
- b) cashless payments through the banking institutions.
- c) withdraw funds from client accounts is carried out only on the instruction or with their consent (acceptance), with the exception of the forced write-off (recovery);
- d) prohibition of payments of one person at the expense of the other?

5. What forms of cashless payments are correct:

- a) calculations with use of payment orders;
- b) settle a bill;
- c) payment by letter of credit;
- d) calculation using a cash voucher?

### **Tasks:**

Task 1. Commercial Bank «investment Bank» adopted the decision on the loan PJSC «Kras» to cover losses as a result of a fire at the production facilities of companies.

Are the actions of the Bank. In some cases, loans may be granted?

Task 2. Considering the case of a party which is a Bank, and defining its legal status, the commercial court applied Chapter 7 «Enterprise» of the Economic Code of Ukraine.

1. If the Bank is the enterprise according to the legislation of Ukraine?

2. Correctly applied by the economic court the legal norms? Recalling the relevant provisions of the legislation, what are the main features of the enterprise.

## **Topic 8. The legal basis of exchange trading activity in Ukraine.**

1. The concept, characteristics and types of market organization.
2. The concept and content of the exchange agreement.

### **1. The concept, characteristics and types of market organization.**

**Exchange** - a permanent organized wholesale market in which traded commodities (raw materials, foodstuffs, industrial goods, securities, etc.).

#### ***Depending on the form of exchange of goods distinguish:***

- *Mercantile exchange (universal and specialised, for example, exchanges of property);*
- *stock exchange (carry out operations with securities and their derivatives - a derivative).*

*Commodity exchange* is a special entity, which provides services at the conclusion of exchange agreements, identifying supply and demand for goods, commodity prices, examines, organizes and promotes the turnover associated trading operations.

The legal status of a commodity exchange is determined by the Economic code and the Law of Ukraine «On commodity exchange» of 10 December 1992

Commodity exchange is created on the basis of voluntary Association of concerned business entities. The founders and members of the commodity exchanges cannot be the organs of state power and bodies of local self-government and of state and municipal enterprises, institutions and organizations that fully or partially are financed through the State budget of Ukraine or local budgets.

The legal form of commodity exchange act is not defined. In practice, commodity exchanges are created in the form of joint stock company of the closed type or in the form of limited liability companies, taking into account features stipulated by the current legislation.

A commodity exchange operates on the principles of equality of participants of exchange trades, public of exchange trading, the use of free (market) prices.

#### ***Commodity exchange has the right:***

- install in accordance with the laws of their own obligatory for all trading participants, trading rules and stock exchange arbitration;
- to install entrance and periodic fees for exchange members, the fee for the services provided by the exchange;
- install and recover in accordance with the Charter of the exchange fee for registration of agreements on the exchange, as well as sanctions for violation of the Charter of the exchange and the exchange rules;

- to create divisions and approve the regulations on them and the like.

*A commodity exchange is obliged to:*

- to create conditions for exchange trading;
- to regulate exchange transactions;
- to regulate the price of commodities which are admitted to circulation on the exchange;
- to provide members and visitors of the exchange organizational, informational and other services;
- to ensure the collection, processing and dissemination of information regarding market conditions.

Trading rules (article 17 of the Law of Ukraine «On commodity exchanges») are developed in accordance with the law and are the primary document that reglamentary the procedure of exchange operations, management of stock trading and of resolving disputes on these matters, and approved by the General meeting of members of a commodity exchange or the authority authorised by them.

**Trading** are trades that are held publicly and openly in the trading rooms of the exchange, with members of the exchange goods admitted to the implementation of the exchange in the manner prescribed by rules of exchange trade.

Exchange transactions are allowed to perform only the exchange members or brokers - the citizens registered on the stock exchange in accordance with its Charter, to execute the orders of the exchange members, which they represent, on the implementation of exchange operations.

Trade commodities held on certain days according to the established by the exchange rules. Objects of exchange transactions in the classical sense recognized products are the result of individual characteristics and features, and generic characteristics, that is, a number, a unit or measure, whereby such goods are considered to be interchangeable. Exchange trade in its economic nature is external and involves the standardization of products or view samples.

**Stock exchange** is an institutionalized, permanent market on which you trade securities. It is created in the form of a joint stock company, which concentrates the supply and demand of securities, contributes to the formation of their exchange rate and operates in accordance with the laws and the statutes and the rules of the stock exchange.

Its legal status determines the Economic Code and the Law of Ukraine «On securities and stock market» from 2006

Stock exchange is created by founders, dealers in securities in the manner prescribed by law. The law establishes the minimum number of founders should be

not less than 20, with the portion of the Fund that belongs to one shareholder may not exceed 5 %. The minimum size of the authorized Fund of the exchange - 10 thousand non-taxable minimum incomes of citizens.

Joint-stock company obtains the status of the stock exchange since the date of its registration by the State Commission on securities and stock market. The procedure of registration stipulated by the regulations on registration of stock exchanges and trading-informational systems and regulation of their activities, approved by order of the State Commission on securities and stock market dated January 15, 1997

The stock exchange is directed exclusively to the organization of the conclusion of contracts of purchase and sale of securities and their derivatives. Stock exchange may not carry out operations with securities on own behalf and on behalf of clients, and to perform Depository functions.

The stock exchange shall terminate in the manner prescribed for the termination of activities of economic societies, and also if the number of members throughout the statutory period remains less than the minimum number specified by law (10 members).

Of the exchange act on the basis of self-government, economic independence and legal persons possessing special legal capacity. The exchange property belongs to her by right of ownership, and is formed by shares, admission and periodic contributions from its members, revenue from exchange transactions and the provision of services subdivisions of the exchange, penalties for violation of the Charter of a commodity exchange and rules of exchange trade, and other cash receipts that do not contradict the current legislation.

Stock and commodity exchange are created as organization without purpose of profit. The conditions of membership in the exchange is the payment of share (for founders) or the entrance (for the other members of the exchange) payment. The contribution meets the cost of the exchange (brokerage) places, determined based on supply and demand for it. The person that paid for shares or an entrance fee, becoming the owner of stock places, can take in hiring their membership rights or sell them pursuant to the exchange right.

The exchange's governance bodies are the General meeting of its members, the exchange Committee (exchange Board), the Executive Directorate. The controlling body - audit Commission. The functional structure of the exchange contains a special sub-sections clearing house, exchange arbitration, the quotation Commission and other subdivisions necessary for its activities. In the structure of the exchange can operate up to 40 different committees or commissions.

In the trading of personal participation of the members of the exchange or exchange brokers – individuals registered on the stock exchange in accordance with its Charter; their duty is to the execution of orders of exchange members they represent regarding the conduct of exchange operations by contract search and view operations for registration on the exchange.

The parties exchange contracts (stock exchange contracts) concluded as a result of actions of the brokers who are exchange members and their clients who are in contractual relations with exchange members or brokerage houses. Trading agreement is with an indispensable part of the exchange, but the side in them can not be.

## **2. The concept and content of the exchange agreement.**

*Exchange agreements* - it concluded by participants of exchange trade contract (agreement) concerning the exchange of goods in the course of trading. In its economic content of the exchange agreement aimed at the transfer of the property to the buyer. Legally, such transfer is made out by contracts of sale, supply. Exchange agreements in principle do not differ from the agreements concluded outside the exchange, but they can only be exchange members or brokers. Concluded during the trading, the agreement must be submitted for registration to the exchange not later than the next day. The agreement is considered concluded from the moment of its registration on the stock exchange and notarization can not be.

Most of exchange agreements concluded with the participation of financial intermediaries that carry out a dealership or brokerage. In dealer activities broker that receives the goods (securities, standard contracts) with the purpose of the following resale on the stock exchange, acting on its own behalf and at its own expense, in becoming a party to the contract. In the brokerage activities in the implementation of the exchange agreement, he acts in the best interests of the client. Acting under agreement with the client, the intermediary enters into stock exchange agreement on behalf and for the account of the client, but on the basis of the contract of the Commission on its own behalf, but at the expense of the client.

*Exchange agreements depending on their execution time are divided into these:*

- agreement with immediate execution («agreement on the real product»);
- term (agreement term):
- forward contract - standard document which certifies the obligation of the person to buy (sell) securities, goods or funds at a certain time and on certain conditions in the future with fixing of the prices of such sales at the time of conclusion of such forward contract;

- futures contract - standard document which certifies the obligation to purchase (sell) securities, goods or funds at a certain time and on certain conditions in the future, fixing prices at the time of execution of obligations by the parties to the contract. The subject of futures agreements are standardized exchange traded contracts for standardized goods with a predefined deadline, but at a price established at the date of conclusion of the contract.
- option - standard document which certifies right to purchase (sell) securities, goods or funds on certain conditions in the future, fixing prices at the time of conclusion of such option or at the time of such acquisition by the decision of the parties to the contract.

**Abstracts:**

1. The chamber of Commerce.
2. Legal characteristics of the exchange agreements.
3. Types of exchange agreements.
4. Rules of exchange trade.
5. Liability for violation of stock trading rules.

**Test tasks:**

1. Depending on the form of exchange of goods are distinguished:
  - a) commodity exchange;
  - b) exchange of precious metals;
  - c) stock exchanges;
  - c) currency exchange?
2. What are the rights of commodity exchange is correct:
  - a) to establish, in accordance with its own legislation binding on all market participants, trading rules and stock exchange arbitration;
  - b) set and collect in accordance with the Charter of the exchange fee for registration of agreements on the exchange, as well as sanctions for violation of the Charter of the exchange and the exchange rules;
  - c) to set the entrance and periodic fees for exchange members, the fee for the services provided by the exchange;
  - d) to engage in commercial mediation?
3. The concept of what exchange is given: «this is an institutionalized, permanent market on which you trade securities. It is created in the form of a joint stock company, which concentrates the supply and demand of securities, contributes to the formation of their exchange rate and operates in accordance with the laws and Charter»:



- a) commodity exchange;
- b) financial markets;
- c) exchange of precious metals;
- d) stock exchange?

4. Idea what exchange agreement is given: «this is a standard document which certifies right to purchase (sell) securities, goods or funds on certain conditions in the future, fixing prices at the time of conclusion of such option or at the time of such acquisition by the decision of the parties to the contract»:

- a) option;
- b) a forward contract;
- c) futures contract;
- d) of the agreement with immediate execution?

5. The minimum size of the authorized Fund of a stock exchange shall be not less than:

- a) 10 thousand non-taxable minimum incomes of citizens;
- b) 15 thousand untaxed minimum incomes of citizens;
- c) 20 thousand free minima of the income of citizens;
- e) 25 thousand non-taxable minimum incomes of citizens?

### **Tasks:**

Task 1. Citizens of Ukraine Petrenko, Mironenko, Orlyuk, and others, only 20 people decided to create a stock exchange. One of them was not engaged in the trading of securities. These persons intend to form authorized Fund of the exchange in the amount of 15,000 untaxed minimum incomes of citizens.

1. If the specified faces to create a stock exchange?

2. What are the requirements established by the legislation of Ukraine concerning persons who can be founders of a stock exchange?

Task 2. The state Commission on securities and stock market were registered stock exchange PJSC «Securities».

1. Is it right to the registration of this stock exchange?

2. What government body registers the stock exchange? Justify your answer.

### **Topic 9. Legal protection of rights and legitimate interests of business entities.**

- 1. Concepts and means of protection of the rights of economic entities.
- 2. The concept and content of the lawsuit.
- 3. The term of consideration of claims.
- 4. A review of judicial decisions.

## **1. Concepts and means of protection of the rights of economic entities.**

The state ensures the protection of rights and legitimate interests of business entities. Each entity in accordance with the Economic Code and economic procedural code of Ukraine has the right to protection of their rights and legitimate interests. *The rights and legitimate interests of subjects are protected and marked in these ways:*

- recognition of the existence or absence of rights;
- recognition of fully or partially invalid acts of public authorities and bodies of local self-government, acts of other entities that are contrary to the law, violate rights and legitimate interests of a business entity;
- the annulment of economic agreements;
- resumption of the situation that existed before the violation of rights and lawful interests of business entities;
- the termination of actions that violate the right or create the threat of its violation;
- the award to the fulfillment of duty in kind;
- compensation of losses;
- the application of penalties;
- application of operational and economic sanctions;
- application of administrative sanctions;
- the creation, modification and termination of economic relations;
- other ways provided by law.

*The state guarantees the rights and interests of business entities* can be divided into:

- *common* - lies in the fact that the state guarantees to business entities, regardless of their chosen organizational-legal forms of economic activity and types of ownership, equal rights and creates equal opportunities for access to logistical, financial, labor, informational, natural and other resources;

- *property* - lies in the fact that the state, by appropriate legislation, the establishment of special structures guarantees the inviolability of their property and protects the right of ownership (article 13 of the Constitution).

The procedure and forms of protection of rights of business entities defined in the first place, rules of the Economic procedural code of Ukraine (GIC), under which commercial disputes are resolved in the order of action proceedings and bankruptcy proceedings - taking into account the peculiarities stipulated by the Law of Ukraine «About renewal of solvency of debtor or recognition by his bankrupt».

Disputes are resolved on the basis of the Constitution of Ukraine, laws and other normative-legal acts of Ukraine, international treaties and agreements, a consent on obligatory of which the Verkhovna Rada of Ukraine.

Special attention of the legislator gives to the protection of property rights, because property is the basis for the existence and activities of entrepreneurs and enterprises of all organizational-legal forms. Stipulated by the current legislation *ways of protection of property rights can be divided into:*

- *proprietary* - aimed at protection from direct undue influence by any other persons. One of them is claiming the owner of his property from another's illegal possession. The plaintiff in the case will be the owner of, property of which possession was eliminated without his consent. Such a claim is called *vindication*.

The owner may also sue *negatory claim* (action for the elimination of any violations of his property rights even if those violations are not connected with deprivation of possession). The basis for negating claim are violations that prevent the owner to exercise his rights of use and disposition of property. At the same time, although property and not out of the possession of the owner, to use it for its intended purpose, the owner is not able;

- *law of obligations* - apply commitment, in particular contractual relationship between the owner and the person that unduly withholds the property (for example, when the lessee returns to the lessor-the owner of his property at the end of the term of the lease).

## **2. The concept and content of the lawsuit.**

In the process of management between enterprises, entrepreneurs, government and other bodies arise, are implemented and terminated numerous business relationships, which are sometimes accompanied by disputes and economic disputes.

Most disputes are transmitted to the decision of the economic court without pre-trial settlement.

In pre-trial settlement in accordance with article 5 of the EPC of Ukraine need only those commercial disputes that arise from the contract of carriage, contract for the provision of communication services and a contract based on public procurement (regarding these disputes, the parties can seek protection of their legitimate interests in the economic court only after the contractor has been forwarded the complaint, which he either rejected or did not give an answer within the period prescribed by applicable legislation). In other cases, the procedure of pre-trial settlement occurs with the consent of the parties, in cases where it is expressly provided by the conditions of the prisoner between them the contract.

Failure to follow the procedure of pre-judicial settlement of disputes is grounds for returning the statement of claim (article 63 COD).

Established certain requirements for the content and form of the claim. It should be presented only in written form (article 6 of COD).

The claim is signed by the authorized person of the company or their representative and sent to the addressee by recorded delivery (valuable) mail or handed against receipt.

### **3. The term of consideration of claims.**

The legislation established two types of terms of consideration of claims:

- General (within one month from the date of its receipt);
- special (claims related to the quality and completeness of products, are considered for two months).

Establish appropriate requirements as to the form and content of the response to the claim. First and foremost is the written response.

If the response on acceptance of the claim is not reported on the transfer of the amount recognized, then the applicant after 20 days after receipt of the response has the right to present to the Bank an order to write off in an indisputable manner recognized by the debtor of the amount. Order is added to the response of the debtor, and if it does not indicate the size of the recognized amount, then added a copy of the claim.

The main method of protection of violated rights and legitimate interests of citizens, entrepreneurs and businesses is a judicial protection on behalf of the state, which is governed primarily by the rules of the Economic procedural code of Ukraine.

An appeal to the court to protect the right of the company, the entrepreneur and any agreement to waive such rights is invalid (article 2 COD). The only possible failure of the enterprise, the plaintiff has already alleged claim, but that further deprives the claimant of the right for repeated appeal to the court with these requirements.

Justice in economic relations is carried out by economic courts. In accordance with the Law of Ukraine «On the judicial system» the system of specialized judiciary which administer justice in economic relations, are the Supreme economic court of Ukraine, appellate economic courts of regions and local economic courts.

But the economic courts have jurisdiction over cases:

- on disputes arising at the conclusion, change and termination of commercial contracts - pre-contractual disputes;
- on disputes arising in the performance of contracts;
- on disputes arising for other reasons (for example, for damages caused the company as a result of executing instructions of the state or other bodies);

- invalidation of acts of state and other authorities on the grounds noted in the legislation;

- according to the statements of the Antimonopoly Committee of Ukraine on issues referred to its competence;

- bankruptcy.

The procedure of consideration of cases and other judicial procedures determined by the Economic procedural code of Ukraine.

Turning to the economic court with the claim about protection of their violated rights of the company or the entrepreneur must pay the government fee.

Enterprises and entrepreneurs (both plaintiffs and defendants) in litigation shall enjoy equal procedural rights.

The result of a judicial decision of any commercial dispute is the court decision - government act, which links rule of law with a specific legal fact and extend the norm to this fact, establishes the rights and obligations of specific entities.

Depending on the reason the court makes a decision (when the decision dispute of fact), regulations (for bankruptcy - the decision on recognizing the debtor bankrupt to the appellate and cassation review rendered by the court on previous instances of the judgments, orders).

The decision of the economic court comes into legal force at the end of ten days from the date of its adoption, and if at the hearing was announced only introductory and operative part of the judgment, it shall enter into force after ten days from the date of signing of the decision.

In the case of an appeal or making the Prosecutor appeal the decision, if it is not abolished, shall be lawful in force after the proceedings on appeal.

The content and structure of the judicial decision must meet the requirements of article 84 EPC of Ukraine. A judicial decision consists of the introductory, descriptive, reasoning and operative parts.

#### **4. A review of judicial decisions**

Reliable protection of rights and interests of business entities provides a statutory order of review of judicial decisions in the appellate and cassation procedure, which checks the legality and validity taken by economic courts of the previous instances of decisions, approvals and regulations.

A review of decisions which have not entered into legal force, resolutions (for bankruptcy) in order to appeal conduct of appeal economic courts of the regions.

Appeal (representation) is supplied through the local economic court that considered the case. The local economic court within five days shall transfer the

appeal or representation together with the case in the appellate economic court (article 91 and 92 COD).

The appeal will go, and appellate representation must be paid within 10 days from the date of the decision of local economic court, and if at the hearing was announced only introductory and operative part of the judgment from the date of signing of the decision. The renewal of the missed procedural deadline for filing an appellate complaint may within three months from the date of the decision of local economic court (article 93 COD).

Economic court of appeal is reviewing the case under the rules of these cases in the first instance, with certain limitations (article 101 COD - deprivation of the right to take additional evidence, except in those cases where the applicant has justified the impossibility of their submission to the court of first instance for reasons that do not depend on him, the rejection of claims that were not subject to review in the court of first instance).

The review on appeal of decisions of local economic courts is exercised by benches of three judges.

Appeal (representation) against the decision of local economic court is considered over a period of two months from the date of receipt of the case together with appeal (representation) to the court of appeals. Following consideration of the appeal (representation) of the economic court of appeal makes a decision that takes legal effect from the day of its adoption.

Review of decisions of local courts that entered into legal force, and judgments of the appeal courts of the regions in the order of cassation is the Supreme economic court of Ukraine.

An appeal may be filed within 1 month from the date of entry into force of the decision of local economic court or the economic court of appeal. It does not include references to the failure of those or other circumstances (article 109 - 111 COD).

In the court of cassation complaint (submission) is treated according to the rules of consideration of cases in courts of first instance, with the exception of procedural actions related to clarification of the circumstances of the case and their investigation. The court of cassation on the basis of the established factual circumstances of the case validates the use of seizures of first or appeal instance of norms material and a procedural right.

Appeal (representation) is seen over a period of two months from the date of receipt of the case along with the appeal (representation) to the Supreme economic court of Ukraine.

Following the results of consideration of cassation complaints (representations), the court takes the decision that takes legal effect from the day of its adoption.

Of cassation granted the right to cancel the decisions or rulings of the previous instances and the case for reconsideration in the court of first instance.

A review of the order of the Supreme economic court of Ukraine, adopted on the results of revision of decisions of local economic court that entered into legal force or the decision of the economic court of appeal on the initiative of the parties or of the General Prosecutor of Ukraine is exercised by the Supreme Court of Ukraine.

Appeals against the decisions of the Supreme economic court of Ukraine Supreme Court of Ukraine is possible on a rather limited number of grounds, the neglect of which has the potential to destabilise the court system in General. For example, the application of the Supreme economic court of a normative legal act that contradicts the Constitution of Ukraine; identify the different application of the Supreme economic court of the provisions of the law or other legal act in similar cases (article 111 of the COD).

Appeal (representation) to the resolution of the Supreme economic court may be filed not later than 1 month from the date of its adoption, however, in the case of the occurrence of grounds for appealing against the decision of the Supreme economic court after the prescribed period, the Supreme Court of Ukraine is obliged to accept the appeal (representation) to its production, despite the end of this period.

The duration of the proceedings on cassation complaint against the decision of the Higher economic court may not exceed 1 month.

By results of consideration of cassation complaints (representations) by a majority vote of the judges who participated in reviewing the decision of the Supreme economic court, the decision of the Supreme court of Ukraine. It is final and not appealable.

An additional guarantee of the rights of business entities is that the decision and decisions of the economic court can be revised due to newly discovered circumstances.

In accordance with Art. 112 of the COD, the economic court may reconsider its decision, which has entered into legal force, due to newly discovered circumstances that are essential for the case and could not have been known to the applicant before (for example, the expert submitted an incorrect conclusion that was the basis for the court decision, incorrect translation of documents or explanations of participants in the process; provision of false or falsified documents).

The right to initiate a review of the case due to newly discovered circumstances is granted to the party and the prosecutor who can apply to the court within 2 months from the date of the discovery of these circumstances, that made a court decision with a statement (submission) on its review.

The court considers the application (submission) for review of the court decision (order) within 1 month and, based on its results, makes: the decision - in case of a change or cancellation of the decision; resolution - in case of change or cancellation of the resolution or leaving the decision, resolution unchanged.

The most important element in protecting the rights of enterprises and entrepreneurs is the effective operation of the legal mechanism for the implementation of court decisions, in this regard, enforcement proceedings, the final stage of the judicial process, are of great importance for all courts, including economic ones. The main provisions on the procedure for implementing decisions of economic courts and decisions are regulated by section XIV of the CPC of Ukraine (Articles 115 - 122), as well as by the Law of Ukraine «On Enforcement Proceedings».

Economic disputes may be considered not only by economic courts. In accordance with applicable law, enterprises have the right to transfer disputes subordinate to economic courts to a court of arbitration. The activities of the arbitration courts are regulated by the Law of Ukraine «On Arbitration Courts».

In case of refusal to consider the economic dispute in the arbitration court or if the response is not received within the established time period, the dispute shall be referred to the economic court for jurisdiction.

The arbitration court shall consider the dispute within a month from the date of receipt of the statement of claim. The decision of the arbitration court is set out in writing and signed by the judges.

In addition, the current legislation of Ukraine provides for the consideration of certain categories of disputes in other specially created arbitration courts (for example, the International Commercial Arbitration at the Ukrainian Chamber of Commerce and Industry).

**Abstracts:**

1. The procedure for filing a statement of claim to the economic court.
2. The form of the statement of claim submitted to the economic court.
3. Negative claim.
4. Vindication claim.
5. Enforcement of court decisions and orders.

**Test tasks:**

1. The means of protecting the rights of business entities are:
  - a) recognition of the presence or absence of rights;
  - b) compensation for losses;



- c) the emergence, change and termination of economic relations;
  - d) the application of economic and criminal sanctions?
2. What cases are subordinate to economic courts:
- a) in disputes between individuals;
  - b) in disputes between an individual and a legal entity;
  - c) in disputes between a legal entity and an individual entrepreneur;
  - d) in disputes between legal entities?
3. What methods of protection of property rights are proprietary:
- a) a negative claim;
  - b) penalty;
  - c) vindication claim;
  - d) fine
4. Which courts are included in the judicial system of economic courts:
- a) Arbitration courts;
  - b) Economic courts of appeal;
  - c) International Court of Human Rights;
  - d) Cassation economic court?
5. What types of terms for the consideration of claims are established by law:
- a) general - up to 1 month;
  - b) general - up to 2 months;
  - c) special - up to 3 months;
  - d) special - up to 6 months?

### **Tasks:**

Task 1. The settlement agreement on the part of the debtor is signed by the arbitration manager, on the part of creditors - the creditor who has the most votes in the committee of creditors.

1. Did these persons have the right to sign a settlement agreement? 2. In what cases, and at what stages of bankruptcy proceedings can a settlement be reached?

Task 2. The enterprise «Crimea-service» filed a claim for compensation for lost profits by the state enterprise «Agrosoyuz» in the Economic Court of Appeal. The court issued a ruling that initially economic disputes should be considered by local economic courts.

Did the Economic Court of Appeal do the right thing? Justify your answer.

## **Topic 10. Legal regulation of property relations in Ukraine.**

1. The concept and content of property rights in economic relations.
2. Objects of ownership.
3. Property law relations in economic activity.

### **1. The concept and content of property rights in economic relations.**

*In an objective sense*, the right of ownership is a system of legal rules governing the state of absolute ownership of property to a person (owner) and establishing rights, obligations, and the procedure for protecting rights regarding this property.

*In a subjective sense*, ownership is a measure of the permitted behavior of the owner to own, use and dispose of property belonging to him at his discretion, unless otherwise provided by law.

Ownership is indestructible. No one may be unlawfully deprived of this right or limited in its exercise. A person may be deprived of the right of ownership or limited in its exercise only in cases and in the manner prescribed by law.

The owner owns the right of possession, use and disposal. These powers constitute *the content of the property right*.

*Possession* is a legally secured opportunity for the owner to actually dominate the thing. Distinguish between legal and illegal possession. Illegal possession can be fair and unscrupulous.

*Use* is a legally secured opportunity to extract useful properties of a thing. The owner has the right to use his property for entrepreneurial activity, except in cases established by law. The owner cannot use the right of ownership to the detriment of the rights, freedoms and dignity of citizens, the interests of society, worsen the environmental situation and the natural qualities of the land.

*An order* is a legally secured opportunity for an entity to determine the legal fate of a thing (transfer it into ownership or use to other persons on the basis of contracts, bequeath, pledge, etc.)

*According to the subject composition, the following types of property rights are distinguished:*

- *The right of ownership of the Ukrainian people.* Land, its bowels, atmospheric air, water and other natural resources that are located within the territory of Ukraine, the natural resources of its continental shelf, exclusive (marine) economic zone are the objects of property rights of the Ukrainian people. On behalf of the Ukrainian people, the rights of the owner are exercised by state authorities and local

authorities within the limits established by the Constitution of Ukraine. Every citizen has the right to use the natural objects of the property right of the Ukrainian people in accordance with the law.

- ***State ownership.*** State property is property, including cash, which belongs to the state of Ukraine. On behalf of and in the interests of the state of Ukraine, the right of ownership is exercised by state authorities

- ***Communal property right.*** Property (including cash) that belongs to the territorial community. The management of property in communal ownership is carried out directly by the territorial community and the local self-government bodies formed by it.

- ***The right to private property.*** Individuals and legal entities can be owners of any property, with the exception of certain types of property, which, in accordance with the law, cannot belong to them. The composition, quantity and value of property that may be owned by individuals and legal entities is not limited. The law may establish a restriction on the size of a land plot that may be owned by an individual and legal entity

The grounds for acquiring property rights are certain legal facts, with the onset of which the law relates the occurrence of a person's property right.

***There are initial and derivative grounds for acquiring ownership.***

***Initial*** – ownership of the thing arises for the first time, or regardless of the will of the previous owner. Types of initial grounds for acquiring ownership:

- *creation of a new thing* - the ownership of a thing arises as a result of its manufacture, production;

- *the appropriation of public gifts of nature* - the ownership of a thing arises as a result of hunting, fishing, other similar industries, mining in accordance with the law. In addition, the collection of mushrooms, medicinal plants, fruits from wild-growing trees, shrubs falls under this foundation;

- *acquisition of ownership of an ownerless thing*, that is, a thing that does not have an owner or whose owner is unknown. Ownerless movable things can be acquired by acquisitive prescription;

- *processing of a thing* - when when using one thing (material) a new thing is created as a result;

- *acquisitive prescription* - the acquisition of property rights as a result of bona fide possession of other people's property. Such ownership should be open and continuous: 10 years of real estate; 5 years - movable;

- *a find.* A person who has found a lost thing acquires ownership of it after 6 months from the date of application for find to the police or local government, if the owner is not established or he does not claim the right to the thing.

**Derivatives** - the ownership of a thing arises by the will of the previous owner:

- *contract*. At the same time, the will of one side should be aimed at transferring a thing into property, on the other hand, at getting a thing into property;

- *inheritance*. In this case, the heirs after the death of the deceased testator receive the property in the property through inheritance succession;

- *privatization* - the transfer of property from state (communal) property to private;

**Termination of ownership** - these are legal facts that entail the termination of a person's ownership of a particular property.

There are such types of termination of ownership: at the will of the owner and in addition to the will of the owner.

**Termination of ownership at the will of the owner:**

- *alienation by the owner of his property;*

- *owner refusal of ownership;*

- *destruction of property.*

**Termination of ownership beyond the will of the owner:**

- *redemption of land in connection with public necessity;*

- *redemption of real estate in connection with the redemption for public necessity of the land on which it is located;*

- *termination of ownership of property that, by law, cannot belong to this person*

- *foreclosure on property for the obligations of the owner;*

- *termination of a legal entity;*

- *redemption of historical and cultural monuments;*

- *death of the owner;*

- *confiscation;*

- *requisition.*

**The exercise of the right of ownership is the realization by the owner of the legal opportunities (powers) contained in the ownership right.**

All owners are ensured equal conditions for the exercise of their rights. The property is binding. When exercising the right of ownership, the owner is obliged to adhere to the moral foundations of society; cannot use the right of ownership to the detriment of the rights, freedoms, dignity of citizens, the interests of society, violate the environmental situation and natural qualities of the land.

The activities of the owner may be limited or terminated, or he may be required to allow other persons to use his property only in cases and in the manner prescribed by law.

## **2. Objects of ownership.**

### ***The objects of state ownership are:***

- land, property, which ensures the activities of the Verkhovna Rada of Ukraine and the state bodies formed by it, property of the Armed Forces, state security bodies, border and internal troops;

- defense facilities: a single energy system; public transport, communication and information systems of national importance;

- state budget funds; the national bank and its institutions and the credit resources created by them: republican reserve, insurance and other funds;

- property of higher and secondary special educational institutions;

- property of state enterprises;

- objects of socio-cultural sphere or other property, which forms the material basis of the sovereignty of Ukraine and ensures its economic and social development.

Other property transferred to the ownership of Ukraine by other states, as well as legal entities and citizens may also be in state ownership.

*Communal property* contains property, including funds that belong to the territorial society. *The subject* of the right of communal ownership are territorial communities represented by regional, district, city, township, village councils. The property that is owned by the community is managed by the territorial communities of a village, township, city directly or through the local self-government bodies (councils) formed by them.

### ***The objects of communal property right are:***

- property, which ensures the activities of the respective councils and bodies formed by them; funds of local budgets; state housing fund;

- Housing and utilities facilities;

- property of institutions of public education, culture, health, trade, consumer services; property of utilities;

- local energy systems, transport, communication and information systems, including nationalized property, transferred to relevant enterprises, institutions, organizations;

- other property necessary to ensure the economic and social development of the corresponding territory and the like.

*Subjects of private property rights* in Ukraine are individuals and legal entities (Article 325 of the Civil Code of Ukraine). Individuals and legal entities can be owners of any property, with the exception of certain types of property, which, in accordance with the law, cannot belong to them.

*The objects of private property rights are* residential buildings, apartments, personal items, dachas, garden houses, household items, livestock and livestock, land, plantings on the land, means of production, manufactured products, vehicles, cash, stocks, other securities, as well as other consumer and industrial property.

The composition, quantity and value of property that may be in the property of citizens is not limited, except as otherwise provided by law.

### **3. Property law relations in economic activity.**

Under *the legal regime of property of an enterprise* is understood the structure of this property established by legal norms, the procedure for its formation, use, as well as levy of lenders on it.

The property of state enterprises is divided into three groups - fixed assets, working capital, as well as other values, the value of which is displayed on the independent balance sheet of the enterprise.

An enterprise has the right to sell and transfer to other enterprises, organizations and institutions, exchange, lease, provide for free temporary use or a loan its houses, constructions, equipment, vehicles, inventory, raw materials and other material values, as well as write them off off balance. However, the alienation of the means of production by state enterprises is carried out exclusively on a competitive basis (through exchanges, through competition, at auctions) in the manner determined by the Regulation on the procedure for the alienation of fixed assets that are state property approved by the State Property Fund of Ukraine of 30.07. 1999 year.

The alienation of property of a state enterprise is possible upon receipt of a permit from a central or local executive body authorized to exercise the functions of managing state property in agreement with the State Property Fund of Ukraine or its regional branches, the Property Fund of the Autonomous Republic of Crimea.

The funds received as a result of the alienation of state property (net of fees for services) are credited to the off-budget State Privatization Fund.

*Special funds of an enterprise* – are funds that do not directly and directly take part in the production process, but serve other special purposes provided for by applicable law or the company's charter. The use of funds from one fund for the purposes of another, as a rule, is not allowed. An example of such a fund would be a reserve fund. The main source of equity in the enterprise is the authorized capital, which is the aggregate of participant's contributions to the property when creating the enterprise to ensure its activities in the amounts determined by the charter documents.

Property fund of a special kind can be considered *the profit of the enterprise*. The legal regime of profit of a state enterprise covers: the concept of profit, the

procedure and methods for calculating it; the obligation of the enterprise regarding the payment of taxes on profits and the mechanism for their implementation; enterprise rights regarding the use of profits.

Property funds of *state budgetary institutions* (institutions in the field of culture, health, education, administrative management) consist of fixed assets and materials and belong to them on the basis of operational management.

State budgetary institutions spend the funds allocated to them according to budget estimates in accordance with the purpose of specific target funds. If state budgetary institutions are engaged in economic activity, then they independently manage the income received from such activity.

**Abstracts:**

1. Ownership of a foreign legal entity on a land plot.
2. Ownership of securities.
3. A foreign enterprise as an object of ownership.
4. Foreign currency as an object of ownership.
5. Restrictions on private property rights.

**Test tasks:**

1. The content of the property right includes the following powers:
  - a) the right to operational management;
  - b) possession;
  - c) personal non-property relations;
  - d) use;
  - e) an order?
2. Types of ownership by subject composition:
  - a) the right to private property;
  - b) the right to foreign property;
  - c) the right to personal property;
  - d) the right to communal property?
3. The initial methods for the emergence of property rights are:
  - a) a deed of gift;
  - b) the creation of things;
  - c) find;
  - d) processing of things;
  - e) privatization?
4. The subjects of ownership are:

- a) foreigners;
  - b) foreign enterprises;
  - c) the state;
  - d) domestic animals;
  - e) refugees?
5. The objects of private property rights are:
- a) local energy systems;
  - b) housing;
  - c) land plots;
  - d) defense facilities?

**Tasks:**

Task 1. The state-owned enterprise «Zemstroy» transferred to the «Eurocement» foreign enterprise a land plot for agricultural purposes, as payment for the products provided.

Are the actions of the «Zemstroy» enterprise legitimate? What property cannot be owned by foreign legal entities? Justify your answer.

Task 2. The communal enterprise Komunchystvod filed a lawsuit with the court at PJSC Krona for the demolition of the constructed non-residential premises located on the sewage system owned by the communal enterprise.

Is such a requirement legitimate? What methods of protecting property rights does such a claim relate to? Justify your answer.

**Topic 11. Economic-contractual obligations. Economic and legal responsibility.**

1. Concepts and types of business contracts.
2. Functions of business contracts.
3. The content of the business contract.
4. The procedure for concluding a business agreement.
5. Concepts and types of economic responsibility.

**1. Concepts and types of business contracts**

*Economic and contractual obligations* – are property and economic obligations that arise between business entities or between business entities and non-business entities - legal entities based on business agreements.



*A business agreement* – is an agreement of business entities that seeks to establish, modify or terminate business obligations between them and provides for their cooperation in achieving the economic (commercial) results determined by them. *A business agreement* is a legal document that records the fact of an agreement and the content of the obligations of the parties.

A variety of economic activities determines a wide range of business contracts. Therefore, they are classified according to several criteria:

**1. The subject composition:**

- 1) *bilateral* (supply of products, purchase and sale);
- 2) *multilateral agreements* (leasing agreement).

**2. Depending on the distribution of rights and obligations:**

- 1) *unilateral* (only one party is obliged to perform certain actions in the interests of the other, and the latter has only the right to a loan agreement);
- 2) *bilateral* (both parties are bound by mutual rights and obligations - the contract of sale).

**3. Depending on the nature of the movement of material goods:**

- 1) *Compensated* - in which, in exchange for the transferred thing, the rendered service, the work performed, the other party pays money or makes other property provision;
- 2) *Gratuitous* - in which one side transfers the other thing, provides a service, performs work without receiving a counter grant from the other side.

**4. Depending on the legal basis for concluding the contract:**

- 1) *planned* - are concluded on the basis of state orders, mandatory for acceptance by certain economic entities: state enterprises, monopolistic enterprises;
- 2) *freely regulated* - are concluded on the basis of the economic intentions of the parties legally drawn up by the terms of the contracts.

**5. Depending on the method and time of occurrence of law relations:**

- 1) *consensual* - are considered concluded from the moment the parties reach an agreement on all essential conditions;
- 2) *real* - are considered concluded from the moment of transfer of the thing, subject to agreement of the parties on all essential conditions.  
(loan agreement, contract of carriage).

**6. By the method of the offer and the determination of the content:**

- 1) *an accession agreement* is an agreement in which one party determines in advance the essential conditions of a future agreement. The other side is left to either accept them or not enter into the contract (transportation of goods, insurance, etc.);
- 2) *agreements*, the content of which the parties determine upon their conclusion.

## **7. Regulatory functions:**

1) *preliminary contract* - defines the conditions under which the parties undertake to conclude a business agreement in a future. Such an agreement gives rise to the obligation to conclude the main contract by a certain date, and in case of evading its conclusion, to compensate the losses to the injured party;

2) *the main contract* is a contract, the conclusion of which is provided for in the previous contract.

## **8. Depending on the periods of performance of duties:**

1) *master contracts* - are concluded for the entire period of activity that is regulated. The General Agreement defines the essential conditions for cooperation between the parties throughout the entire period of the relevant activities (construction of a nuclear power plant);

2) *current (one-time) contracts* - are concluded on the basis of a general contract as such that are designed for certain (short) periods of time. Current contracts, as a rule, do not include conditions not provided for by the general contract (otherwise it would be a new (separate) contract), but only specify them

## **2. Functions of business contracts.**

### **Functions of business contracts:**

1) *regulatory* (the contract regulates relations between the parties on the basis of the law, but taking into account the specifics of a particular economic relationship);

2) *coordination* (the agreement as a means of coordination, coordination of their actions in accordance with economic interests and intentions);

3) *information* (the contract, thanks to the formal certainty of its conditions, includes information on the legal status of the parties to the contract, which is necessary for the parties, in appropriate cases, to jurisdictional bodies, third parties);

4) *control* (with the help of the contract, the effectiveness of the activities of business entities is monitored);

5) *guarantee* (only thanks to the contract, such legal methods of fulfilling contractual obligations as forfeit, guarantee, withholding, deposit, guarantee are included in the action);

6) *human rights* (the contract is a legal form of relations, that is, a form within which the enforcement of obligations of the parties is ensured through the use of property sanctions, means of operational influence)

### **3. The content of the business contract.**

The content of the civil law contract is the contractual terms agreed upon by the parties at their own discretion and in accordance with the criteria established by law.

#### **Types of contractual conditions:**

*Essential* - conditions on which the parties must necessarily agree and without reaching an agreement on which the contract is considered to be non-concluded. Essential conditions are the condition on the subject of the contract, the conditions defined by law as material or necessary for contracts of this type, as well as all those conditions regarding which, at the request of at least one of the parties, agreement must be reached.

*Usual* - conditions that are specified by the discretionary provisions of the law and are valid for a separate contract only if otherwise is not provided by agreement of the parties. So, part 1 of article 776 of the Civil Code of Ukraine establishes that the current repair of a thing transferred for hire is carried out by the tenant at his expense, unless otherwise provided by an agreement or law. This is a common condition and it can be changed by the parties to the contract of employment. If, by agreement between them, they impose an obligation to carry out current repair of a thing transferred for hire to a lessor, such a condition will apply to this contract.

*Random* – conditions that are not characteristic of this type of agreement are used by the parties to supplement the usual or essential conditions specified in the law. So, in a resort town, a condition in an agreement on shared participation in the construction of an apartment building may be that the apartment allocated to this shareholder should face the sea. There is an unfounded opinion that when at least one of the parties insists on including a random condition in the contract, it becomes an essential condition for such a contract.

When concluding a business contract, the parties are obliged in any case to agree on the subject, price and duration of the contract.

The conditions on the subject in the economic contract should determine the name (nomenclature, assortment) and the quantity of products (work, services), as well as requirements for their quality. The requirements regarding the quality of the subject of the contract are determined in accordance with the normative documents binding on the parties.

*The price* in the economic contract is determined in the manner prescribed by the Economic Code, other laws, acts of the Cabinet of Ministers of Ukraine.

*The validity period* of a business agreement is the time during which there are economic obligations of the parties that arose on the basis of this agreement.

#### **4. The procedure for concluding a business agreement.**

A general business agreement is concluded in the form of a single document signed by the parties and sealed. It is allowed to conclude business contracts in a simplified form, that is, by exchanging letters, fax messages, telegrams, telephone messages, etc., as well as by confirming acceptance of orders, unless the law establishes special requirements for the form and procedure for concluding this type of contract.

The conclusion of a business contract is a counter-contractual and procedural action of two or more business entities regarding the development of the terms of the contract that meet their real intentions and economic interests, as well as the legal execution of the contract (providing these conditions with a certain form) as a legal act.

Distinguish between **competitive** (bidding: auctions, tenders; tenders) and **non-competitive** methods of concluding contracts.

##### **Non-competitive ways of concluding business contracts:**

1) through direct negotiations by the authorized representatives of the parties, which end with the signing of the contract as the only document;

2) by sending one side to the other side of the draft contract and agreeing on the positions of the parties regarding the conditions.

A draft contract may be proposed by either party. If the draft contract is laid out as a single document, it is submitted to the second party in duplicate.

The party that received the draft contract, in case of agreement with its terms, draws up the contract in accordance with the requirements and returns one copy of the contract to the other party or sends a response to a letter, fax, etc. within twenty days after receiving the contract.

If there are objections to certain terms of the contract, the party that received the draft contract draws up a protocol of disagreement, which is cautioned in the contract, and within twenty days sends two copies of the protocol of disagreement to the other party along with the signed contract.

The party that received the protocol of disagreements to the agreement is obliged to consider it within twenty days, take measures to resolve the disagreements with the other party within the same time period and include in the contract all accepted proposals, and transfer those disagreements that remain unresolved within the same period to the court, if there is consent of the other party.

If the parties reach an agreement regarding all or certain conditions noted in the protocol of disagreements, such consent must be confirmed in writing (protocol for reconciliation of disagreements, letters, telegrams, etc.).

If a party that has received a protocol of disagreement regarding the terms of an agreement based on a state order or one whose conclusion is obligatory for the parties on the basis of the law, or an executing party under an agreement that is recognized as a monopolist in the established market for goods (works, services) , which received the protocol of disagreements, will not send the disagreements to the court within the noted twenty-day period, that they remained unresolved, then the proposals of the other party are considered accepted.

In the event that the parties have not reached agreement on all the essential terms of the business agreement, such an agreement shall be deemed not concluded (such that it did not take place). If one of the parties has taken actual actions regarding its implementation, the legal consequences of such actions are determined by the norms of the Civil Code of Ukraine.

*Modification and termination of business contracts unilaterally are not allowed, unless otherwise provided by law or contract. The party to the contract that considers it necessary to amend or terminate the contract must send a proposal to the other party to the contract.*

The party to the contract that received the proposal to amend or terminate the contract, within twenty days after receiving the proposal, informs the second party about the results of its consideration.

In the event that the parties have not reached agreement regarding the amendment (termination) of the contract or if the response is not received within the prescribed time taking into account the time of postal circulation, the interested party has the right to refer the dispute to the court.

## **5. The concept and types of economic responsibility.**

Business entities and other participants in economic relations must fulfill economic obligations in accordance with the law of other legal acts, the contract, and in the absence of specific requirements for the fulfillment of the obligation - in accordance with the requirements.

Violation of obligations is the basis for applying economic sanctions provided for by the Economic Code, other laws or the contract.

The application of economic sanctions to an entity that has violated an obligation does not relieve that entity from the obligation to fulfill the obligation in kind, unless otherwise provided by law or contract, or the other party refused to accept the obligation.

Unilateral refusal to fulfill obligations, except cases provided by law, as well as refusal to fulfill or postponement of fulfillment for the reason that the obligation of the other party under another agreement was not properly performed, is not allowed.

An economic obligation is subject to fulfillment at a place determined by law, an economic agreement, or a place that is determined by the content of the obligation.

If the place of fulfillment of the obligation is not defined, the obligation must be fulfilled:

- for obligations, the content of which is the transfer of rights to a building or land, other real estate - at the location of the building or land, other real estate;

- for monetary obligations - at the location of the authorized party at the time the obligation arose, or at the new location, provided that the authorized party informed the obligated party about it in a timely manner;

- for other obligations - at the location of the permanent and current governing body (place of residence) of the obligated party, unless otherwise provided by law.

*Ensuring the fulfillment of economic obligations* (Articles 199–201 of the Economic Code of Ukraine, Chapter 49 of the Civil Code of Ukraine).

***Ways to ensure proper performance of obligations:***

- *A pledge* is a way to ensure the fulfillment of an obligation, by virtue of which a creditor (pledge holder) has the right, in case of default by the debtor (pledger) of the obligation secured by the pledge, to receive satisfaction from the mortgaged property mainly to other creditors of this debtor, unless otherwise provided by law.

- *retention* is the right of the creditor who rightfully owns the thing to be transferred to the debtor or to the person indicated by the debtor, in case of failure by the debtor to fulfill the obligation to pay for this thing or related expenses and other losses on time, to keep the thing until the debtor fulfills the obligation.

- *a deposit* is a sum of money or movable property that is issued to the creditor by the debtor on account of payments due from him under the contract, in support of the obligation and in ensuring its performance.

- *forfeit* is a sum of money or other property that the debtor must transfer to the creditor in case of violation by the debtor of the obligation

- *a guarantee* is a transaction by virtue of which a bank, other financial institution, insurance organization (guarantor) guarantees to the creditor (beneficiary) the performance by the debtor (principal) of his obligation.

- *a surety* is a contract by which a surety warrants to a debtor's creditor for fulfilling his obligation.

General conditions for the termination of economic obligations (Article 202 of the Economic Code of Ukraine, Chapter 50 of the Civil Code of Ukraine):

- 1) performance performed in a proper manner;

- 2) transfer of compensation (money, other property and the like);
- 3) crediting the counter homogeneous claim or insurance obligation;
- 4) in case of coincidence of the authorized and obligated parties in one person;
- 5) with the consent of the parties (in particular, an agreement on the replacement of one obligation by another between the same parties - novation, debt forgiveness);
- 6) due to the impossibility of implementation (in the event of circumstances whereby none of its parties is responsible) and in other cases.

A business obligation shall also be terminated in the event of its termination or invalidation by a court decision.

An economic obligation that does not meet the requirements of the law or is committed with a purpose that obviously contradicts the interests of the state and society, or is entered into by participants in economic relations in violation of at least one of them economic competence (special legal personality), may be at the request of one of the parties or the relevant body state authority recognized by the court as invalid in whole or in part.

***Economic liability*** - these are economic in content and legal in form methods of influencing the economic interests of a business entity - the offender. Economic and legal responsibility is designed to stimulate the proper implementation of economic and other obligations. Therefore, *its main goal* is to ensure the rule of law in the field of economics (in economic relations).

*Principles of economic liability:*

- 1) the injured party has the right to compensation for losses, regardless of whether it is indicated in the contract;
- 2) the liability of the manufacturer (seller) provided for by law for the poor quality of products is also applied regardless of whether there is a warning about this in the contract;
- 3) payment of penalties for violation of the obligation, as well as compensation for losses, do not exempt the offender without the consent of the other party from fulfilling the obligations in kind;
- 4) in the economic contract, unacceptable warnings regarding the exclusion or limitation of the liability of the manufacturer (seller) of products.

*Functions of legal liability:*

- 1) *compensation-renewal* - the resumption of a violated law and order and the elimination of the consequences of unlawful behavior of a business entity (compensation for losses, forfeit);
- 2) *preventive* - the threat of the application of economic liability compels us to act lawfully;

3) *signaling* - for one side it is a signal about the need to improve work, and for the other - about the feasibility of continuing economic relations with an unreliable party.

The basis of the economic liability of a participant in economic relations is the offense committed by him in the field of economic activity.

Economic sanctions are applied in the manner prescribed by law at the initiative of participants in economic relations, and administrative and economic sanctions are applied by authorized state bodies or local authorities.

*Economic sanctions* are recognized measures of influence on the offender in the field of economic activity, as a result of which adverse economic and (or) legal consequences result for him.

In the area of management, the following types of sanctions are applied:

- *compensation for losses;*
- *penalties;*
- *operational and economic sanctions;*
- *administrative sanctions.*

***Indemnification.*** A participant in economic relations who has violated an economic obligation or established requirements for the implementation of economic activity shall compensate the losses caused by this to an entity whose rights or legal interests are violated.

***Penalties are*** economic sanctions in the form of a monetary amount (forfeit, fine, penalty) that a participant in an economic relationship is obligated to pay in case of violation of the rules of carrying out economic activity, non-fulfillment or improper fulfillment of an economic obligation.

The law on certain types of obligations can determine the amount of penalties, which cannot be changed by agreement of the parties (the party is a business entity that belongs to the state sector of the economy, or the violation is related to the fulfillment of the state contract). If the amount of penalties is not defined by law, the sanctions are applied in the amount stipulated by the contract. In this case, the amount of sanctions can be established by the agreement as a percentage of the amount of the unfulfilled part of the obligation, either in a certain amount of money, or as a percentage of the amount of the obligation, regardless of the degree of fulfillment, or in a multiple of the cost of goods (work, services).

Accrual of penalties for delay in fulfillment of an obligation, unless otherwise provided by law or contract, ceases after six months from the day when the obligation was to be fulfilled.



***Operational Sanctions*** – measures of operational influence on the offender in order to stop breach of the obligation or prevent their recurrence, which are used by the parties to the obligation unilaterally.

To the entity that violated a business obligation, only those operational and economic sanctions that are provided for by the contract may be applied.

Operational and economic sanctions are applied regardless of the fault of the entity that violated the business obligation.

*Types of operational and economic sanctions:*

1) a unilateral refusal to fulfill his obligation by an authorized party with release from liability for this - in case of violation of the obligation by the other party;  
- refusal to pay for an obligation that was improperly executed or prematurely performed by the debtor without the consent of the second party;

- postponement of shipment of products or performance of work as a result of delay in issuing a letter of credit by the payer, the termination of the issuance of bank loans and the like;

2) the authorized party's refusal of the obligation to accept the subsequent fulfillment of the obligation violated by the second party or to return unilaterally by the creditor under the obligation (writing off funds paid for low-quality products from the debtor's account, etc.);

3) the unilateral establishment for the future of additional guarantees of the proper fulfillment of obligations by the party that violated the obligation: changing the procedure for payment for products (works, services), transferring the payer to the previous payment for products (works, services) or for paying after checking their quality and the like;

4) refusal to establish future economic relations with a party that violates an obligation.

The parties may also provide for other operational and economic sanctions in the contract.

Operational and economic sanctions are applied by the party that has suffered from an offense, out of court and without first submitting a claim to the violator of the obligation.

Operational and economic sanctions may be applied simultaneously with damages and recovery of fines.

***Administrative sanctions*** - these are measures of an organizational-legal or property nature that can be applied by authorized bodies of state power or bodies of local self-government and are aimed at terminating an offense of a business entity and liquidating its consequences.

Administrative sanctions may be established exclusively by law.

*Types of administrative sanctions:*

- 1) withdrawal of profit;
- 2) administrative fine;
- 3) collection of fees (mandatory payments);
- 4) the use of anti-dumping measures;
- 5) termination of export-import operations;
- 6) application of an individual licensing regime;
- 7) suspension of the license (patent) for the implementation by the business entity of certain types of economic activity;
- 8) annulment of the license (patent) for the implementation by the business entity of certain types of economic activity;
- 9) restricting or stopping the activities of a business entity.
- 10) cancellation of state registration and liquidation of a business entity;
- 11) other administrative sanctions established by the Economic Code and other laws.

Administrative and economic sanctions can be applied to business entities within 6 months from the day the violation was discovered, but no later than 1 year from the day the entity violates the rules for carrying out economic activities established by legislative acts, except as required by law.

**Abstracts:**

1. Leasing agreement.
2. The loan agreement.
3. Ways of securing credit obligations.
4. Description of economic obligations.
5. Temporary suspension of operations on accounts and forced debiting from the accounts of a business entity.

**Test tasks:**

1. The competitive ways of concluding economic obligations are:
  - a) auction;
  - b) advertising;
  - c) competition;
  - d) tender?
2. The ways to ensure economic obligations include:
  - a) a pledge;
  - b) guarantee;

- c) forfeit;
- d) write-off;
- e) suspension?

3. Depending on the distribution of the rights and obligations of the parties, economic contracts are classified into:

- a) unilateral;
- b) gratuitous;
- c) consensual;
- d) bilateral?

4. Depending on the availability of a counter-provision, business contracts are classified into:

- a) reimbursable;
- b) unilateral;
- c) gratuitous;
- d) consensual;
- e) bilateral?

5. Which of the following sanctions relate to economic and legal sanctions:

- a) penalties;
- b) criminal business;
- c) administrative;
- d) operational and economic?

**Tasks:**

Task 1. Veronika JSC filed a lawsuit with the Style shopping center for collecting interest on borrowed money on the basis of Article 366 of the Civil Code in connection with the delay in payment for the delivered goods. The court dismissed the claim, citing the fact that the contract provides for the collection of interest for late payment of goods.

Is the court right? Justify your answer.

Task 2. The car company filed a lawsuit against the plant to recover a fine for not presenting the goods for transportation in full in the stipulated month. The defendant asked to refuse the claim, because this month there was an accident at the plant, as a result of which production was stopped for three days, which is documented.

Resolve the dispute.

## **Topic 12. Legal basis for the safety of economic activity.**

1. Concepts and types of unfair competition.
2. The misuse of the business reputation of entrepreneurs.
3. Creating obstacles to business entities in the process of competition.
4. Illegal actions in the field of trade secrets.
5. Responsibility for violation of the law on protection against unfair competition.

### **1. Concepts and types of unfair competition.**

Since competition is a powerful tool in a market economy and market relations cannot develop without it, it is strongly encouraged and protected by the state. On the contrary, unfair competition is not allowed by the state, since it destroys competitive relations and harms competition, entrepreneurs and consumers.

*Unfair competition* - these are any actions of competition that contradict the rules, trade and other honest customs in entrepreneurial activity. Thus, unfair competition can be defined as violations of the rules of conduct that have developed and are widely used in entrepreneurship, recognized by entrepreneurs as binding business standards, which is harmful to the relationship of fair competition and freedom in business.

*Three types of such offenses are identified:*

- 1) *unlawful use of the business reputation of a business entity;*
- 2) *the creation of obstacles to entrepreneurs in the process of competition and the achievement of undue advantages;*
- 3) *the unlawful collection, disclosure and use of trade secrets.*

### **2. Misuse of the business reputation of entrepreneurs.**

One of the three types of offenses in the field of unfair competition is *the unlawful use of the business reputation of a business entity* (Section 2 of the Law of Ukraine «On Protection from Unfair Competition»). *It includes three offenses:*

- unlawful use of other people's signs, advertising materials, packaging;
- lawful use of goods of another manufacturer;
- copying the appearance of the product.

In accordance with the requirements of the law, it is unlawful to use without the permission of an authorized person a foreign name, company name, other services, as well as advertising materials, packaging of goods, names of places of origin of goods, which may lead to mixing with the activities of another business

entity, which has priority to use them. Consequently, this offense is associated with the illegal use of the results of intellectual activity and means of individualization, or of an entrepreneur or his goods, services without the consent of their owner.

### **3. Creating obstacles to business entities in the process of competition.**

*The second type of offenses that are determined* is the creation of obstacles to business entities in the process of competition and the achievement of undue advantages in competition (Section 3 of the Law of Ukraine «On Protection from Unfair Competition»). The law names 8 offenses that relate to the named species:

- discrediting a business entity;
- purchase and sale of goods, performance of work and the provision of services with a compulsory assortment;
- declining to boycott the entrepreneur;
- inducing the supplier to discriminate against the buyer (customer);
- inducement of the entrepreneur to terminate the contract with a competitor;
- bribery of the employee of the supplier;
- bribery of the employee of the buyer (customer);
- the achievement of undue competitive advantages.

The most common among this type of violation is discrediting a business entity, which is defined as actions related to the dissemination of erroneous, inaccurate or disfigured, incomplete information that can affect the assessment of the entrepreneur's professional activity.

The third type of offense *is the unlawful collection, disclosure and use of trade secrets* (Section 4 of the Law of Ukraine «On Protection from Unfair Competition»). It includes *4 offenses*:

- illegal collection of trade secrets;
- disclosure of trade secrets;
- inducement to disclose trade secrets;
- misuse of trade secrets.

These rules are designed to protect contractual and confidential business relations and are based on several main provisions: breach of contract or confidentiality of relations, inappropriate method of establishing trade secrets and its disclosure, illegal disclosure by others. Confidential relations may exist between an entrepreneur and his employees, between business partners, between a legal entity and its officials, as well as between an entrepreneur and other commercial and non-commercial entities.

#### **4. Illegal actions in the field of trade secrets.**

By trade *secret of an enterprise* is meant information related to the production, technological information, management, finances and other activities of the enterprise, which is not a state secret, the disclosure of which may harm its interests. The list of information that does not constitute a commercial secret, as defined in the Resolution of the Cabinet of Ministers of Ukraine No. 611 of August 9, 1993.

#### **5. Responsibility for violation of the law on protection against unfair competition.**

In accordance with Art. 20 of the Law, the implementation of actions defined by the Law as unfair competition causes the Antimonopoly Committee of Ukraine to impose fines stipulated by law, as well as administrative, civil and criminal liability in cases stipulated by law.

Implementation of unfair competition by business entities entails the imposition of fines on them by the Antimonopoly Committee of Ukraine in the amount of up to 3% of the proceeds from the sale of goods, the performance of work and the provision of services to the business entity for the last reporting year, which precedes the year in which the fine is imposed, or if the calculation of the proceeds of the business is impossible or there is no revenue, these fines are imposed in the amount of up to 5 thousand non-taxable minimum incomes of citizens.

Administrative responsibility is provided for by Article 164 of the Code of Administrative Offenses, which provides for a fine of 5 to 9 tax-free minimum incomes of citizens (part 2, article 164) or 9 to 18 tax-free minimum incomes (part 3, article 164).

Criminal liability is provided for crimes that violate the requirements of the law on maintaining trade secrets.

In addition to the sanctions mentioned above, the Law of Ukraine «On Protection from Unfair Competition» provides for two special sanctions: the exclusion of goods with an unlawfully used designation and copies of products of another enterprise (Article 25); official disclaimer at the expense of the violator of the facts of discrediting a business entity.

#### **Abstracts:**

1. 1. State bodies regulating relations regarding the safety of economic activity.
2. 2. Unfair competition of foreign enterprises.
3. 3. The business reputation of a legal entity as a personal non-property good.
4. 4. Trade secret and its protection in Ukraine.
5. 5. Administrative and criminal liability for business disruption in Ukraine.

**Test tasks:**

1. Name the types of unfair competition:

- a) unlawful use of the business reputation of a business entity;
- b) the creation of obstacles to entrepreneurs in the process of competition and the achievement of undue advantages;
- c) unlawful collection, disclosure and use of trade secrets.
- d) violation of legal norms in the field of labor protection?

2. Indicate the types of misuse of business reputation of entrepreneurs:

- a) unlawful use of the business reputation of a business entity;
- b) commercial mediation;
- c) unlawful collection, disclosure and use of trade secrets;
- d) creating obstacles to entrepreneurs in the process of competition and achieving undue advantages?

3. Types of offenses regarding the creation of obstacles to business entities in the process of competition and the achievement of undue advantages in competition:

- a) unlawful use of the business reputation of a business entity;
- b) the inclination to boycott the entrepreneur;
- c) inducing the supplier to discriminate against the buyer (customer);
- d) the inducement of the entrepreneur to terminate the contract with a competitor?

4. The concept of which definition is given: «information related to the production, technological information, management, finances and other activities of the enterprise, which is not a state secret, the disclosure of which may harm its interests»:

- a) trade secret;
- b) unfair competition;
- c) business reputation of the entrepreneur?

5. For what violations in the field of economic security is criminalized:

- a) for crimes that violate the requirements of the law on the maintenance of trade secrets;
- b) for crimes that violate the requirements of the legislation on the business reputation of the entrepreneur;
- c) for crimes that violate the requirements of the law on unfair competition?

**Tasks:**

Task 1. Private enterprise «Aqua», purchasing Kozak mineral water in the city of Mukachevo, produced by PJSC «Medicinal waters» and replacing the labels

affixed on the bottles with the inscription «Source-Medicinal Waters» with other labels with the inscription «Aqua», sold these products in the Lugansk region.

Prescriptions, what regulatory act did Aqua PE violate, and what are the legal consequences of such a violation? Give a reasoned answer.

Task 2. Citizen A. founded a private enterprise for the production of workwear. His wife, who is not a private entrepreneur, disseminated information among potential consumers of this product that degraded the business reputation of other manufacturers.

Is there unfair competition in this case (if so, then provide qualifications to the indicated actions and determine who should bear responsibility and what).

### **Topic 13. Legal basis for the restriction of monopolism in the economy of Ukraine.**

1. The concept of a monopoly position in economic activity.
2. Types of violations of antitrust laws.
3. Responsibility for violation of antitrust laws.

#### **1. The concept of a monopoly position in economic activity.**

The functioning of market relations provides for the creation of equal opportunities for business entities, as well as their competition, which is understood as competition between business entities in order to obtain, thanks to their own achievements, advantages over other business entities, as a result of which consumers, business entities have the opportunity to choose between several sellers, buyers, and a separate business entity cannot determine the conditions for the circulation of goods on the market.

Currently significant steps have been taken towards the formation of antitrust laws. The laws On Protection of Economic Competition of January 11, 2001, On the Antimonopoly Committee of Ukraine of November 26, 1993, and On Protection from Unfair Competition of June 7, 1996 were adopted.

In order to ensure state control over compliance with antitrust laws, protect the interests of entrepreneurs and consumers from violations, a special state body, the Antimonopoly Committee of Ukraine (ACU), has been formed.

#### ***The main tasks of the Antimonopoly Committee of Ukraine are:***

- implementation of state control over compliance with antitrust laws;
- protection of the legitimate interests of entrepreneurs and consumers through the introduction of measures to prevent and stop violations of antitrust laws, penalties for violation of antitrust laws within their powers;



- promoting the development of fair competition in all areas of the economy.

The Antimonopoly Committee and the territorial branches formed by it constitute the system of bodies of the Antimonopoly Committee of Ukraine, headed by the Chairman of the Committee.

***The Antimonopoly Committee performs such functions.:***

- monitors compliance with antitrust laws during the creation, reorganization, liquidation of business entities; in carrying out business activities by entrepreneurs and in the exercise of the powers of central and local bodies of state executive power;

- considers cases of violation of antitrust laws and makes a decision based on the results of consideration within the limits of its authority;

- appeals to the court or the economic court with claims (statements) in connection with violations of the antimonopoly legislation;

- takes part in the development and submits in the prescribed manner draft legislative acts on relevant issues and more.

The Antimonopoly Committee of Ukraine is composed of the Chairman and ten state representatives. The requirements of state representatives and chairmen of the territorial branches of the Antimonopoly Committee of Ukraine, within the limits of their authority, are binding on their deadlines.

State authorities and local self-government bodies that regulate relations in the economic sphere are prohibited from adopting acts or performing acts that determine the privileged position of business entities of one or another form of ownership, or put unequal conditions for certain categories of business entities or otherwise violate the rules of competition.

The decision or actions of these bodies, which are aimed at restricting competition or may result in such restrictions, are considered justified in cases:

- the provision of social assistance to individual business entities, provided that assistance is provided without discrimination of other business entities;

- providing assistance at the expense of state resources in order to recover damages caused by natural disaster or other emergency events in certain markets for goods or services, the list of which is established by law;

- providing assistance, including the creation of favorable economic conditions for certain regions in order to compensate for the socio-economic losses caused by the difficult environmental situation;

- implementation of state regulation related to the implementation of projects of national importance.

A dominant position of a business entity is recognized as a monopoly, which enables it to independently or together with other entities limit competition in the market for a particular product (work, service).

*The business entity occupies a monopoly (dominant) position in the product market if:*

1) in this market he has no competitors;

2) does not experience significant competition as a result of the limited access opportunities of other business entities regarding the purchase of raw materials, materials and the sale of goods, the presence of barriers to access to the market of other business entities, the availability and benefits or other circumstances;

3) a part of a business entity in the product market exceeds 35% if it does not prove that it is experiencing significant competition;

4) a part of a business entity in the product market is 35% or less, but it does not experience significant competition, in particular as a result of the relatively small size of market parts that belong to competitors;

5) it is considered that each of two or more business entities occupies a monopoly (dominant) position in the product market if there is no competition between them regarding a certain type of product or there is little competition and one of the conditions provided for in paragraph 1 is fulfilled with respect to them taken together -2;

6) the situation of each of several business entities, if the following conditions are met with respect to them:

- the aggregate part of no more than three business entities to which the largest parts belong in one market exceeds 50%;

- the aggregate part of not more than five business entities to which the largest parts belong in one market exceeds 70%, and they will not prove that the conditions of paragraph 5 are not met with respect to them.

*Commodity Market* - this is the scope of the circulation of goods (interchangeable goods), for which there is demand and supply for a certain time and within a certain territory.

The condition of the commodity market, under which the satisfaction of demand in this market is more effective provided that there is no competition as a result of technological features of production (due to a significant decrease in production costs per unit of output to the extent of increasing production volumes), and goods (services) that are produced by entities management, cannot be replaced in consumption by others, in connection with which the demand in this product market is less dependent on changes in prices for such goods than the demand for other goods (Services) - is considered a natural monopoly.

In itself, the monopoly position of one or another business entity is not recognized as a violation of antitrust laws.

## **2. Types of violations of antitrust laws.**

### ***Types of Antitrust Violations.***

#### **1. Abuse of monopoly position:**

- the imposition of such contract terms that put counterparties in an unequal position, or additional conditions that do not relate to the subject of the contract, including the imposition of goods that are not needed by the counterparty;

- restriction or termination of production, as well as the exclusion of goods from circulation in order to create or maintain a deficit in the market or establish monopoly prices;

- other actions taken to create obstacles to market access (exit from the market) of other business entities;

- the establishment of monopolistically high or discriminatory prices (tariffs) for their goods, which leads to a violation of consumer rights or restricts the rights of individual consumers;

- the establishment of monopolistically low prices (tariffs) for their goods, which leads to limited competition, etc.

#### ***2. Illegal agreements between business entities aimed at:***

- establishment (support) of monopoly prices (tariffs), discounts, allowances (surcharges), margins;

- the distribution of markets according to the territorial principle, the volume of sales or purchases of goods, their assortment, or according to the circle of consumers, or according to other characteristics, with the aim of monopolizing them;

- elimination from the market or restriction of access to it for sellers, buyers, other business entities, etc.

Agreed actions may be permitted (Article 10 of the Law of Ukraine «On the Protection of Economic Competition») in the event that their participants prove that these actions contribute to:

- improvement of production, acquisition or sale of goods;

- technological, economic development;

- development of small or medium-sized entrepreneurs;

- optimizing the export or import of goods;

- development and application of unified technical specifications or standards for goods;

- rationalization of production.

### *3. Discrimination of business entities:*

- the prohibition of the creation of new enterprises or other organizational forms of managing in any sphere of economic activity, as well as the establishment of restrictions on the implementation of certain types of economic activity or the production of certain types of goods in order to limit competition;

- coercion of business entities to the priority conclusion of contracts, the priority sale of goods to certain consumers or to join economic organizations and other associations;

- decision-making on the centralized distribution of goods, which leads to a monopoly position in the market;

- the establishment of a ban on the sale of goods from one region of Ukraine to another;

- providing individual entrepreneurs with tax and other benefits that put them in a privileged position relative to other business entities, which leads to the monopolization of the market for a certain product;

- restriction of the rights of business entities regarding the acquisition and sale of goods;

- the establishment of prohibitions or restrictions on individual business entities or groups of entrepreneurs.

4. *Unfair competition* - any actions in competition that are contrary to the rules, trade and other honest customs in entrepreneurial activity:

- the unlawful use of the business reputation of a business entity, the creation of obstacles to business entities in the competition process and the achievement of undue advantages in competition;

- unlawful collection, disclosure and use of trade secrets, as well as other actions.

### **3. Responsibility for violation of antitrust laws.**

*For violation of antitrust laws, these types of sanctions are applied.*

1. *Property liability* (Article 52 of the Law «On the Protection of Economic Competition»):

- *in the form of a fine*, which is imposed on business entities - legal entities and individuals;

- *in the form of compensation* for losses caused by abuse of a monopoly position, anticompetitive concerted actions, discrimination of business entities by state authorities, local authorities and administrative and economic management and control bodies. Damage caused by violations provided for in paragraphs. 1, 2, 5, 10, 12, 18, 19 art. 50 of the Law of Ukraine «On the Protection of Economic

Competition», is compensated by the person who committed the violation, in the double amount of the damage done;

- *in the form of an exclusion of goods*, with an unlawfully used designation and copies of products of another business entity.

2. *Organizational and economic sanctions* can be applied both by the Antimonopoly Committee itself (compulsory division of monopolistic entities) and by the relevant authorities and administrations (cancellation of licenses, termination of foreign economic activity).

Forced division does not apply if:

- the impossibility of organizational or territorial separation of enterprises or structural divisions;

- the presence of close technological communication between enterprises and structural divisions, if part of the internal turnover in the total gross output of the enterprise (association and the like) is less than 30%.

3. *The administrative responsibility* of officials of state authorities, local governments, enterprises, institutions, organizations, as well as citizens registered as entrepreneurs, for offenses under Art. 29-32 of the Economic Code of Ukraine, as well as for failure to submit or untimely submission of information prescribed by law, or for the submission of knowingly false information to the Antimonopoly Committee of Ukraine, its territorial branch, evasion or untimely implementation of decisions of the Antimonopoly Committee of Ukraine, its territorial branches.

A business entity that has suffered losses through unfair competitive actions has the right to protect its violated interests and to appeal to specially authorized bodies that provide protection in the manner prescribed by the Law of Ukraine «On the Antimonopoly Committee of Ukraine», the Economic Procedural Code of Ukraine.

These bodies are:

- Antimonopoly Committee of Ukraine;

Territorial branches of the Antimonopoly Committee of Ukraine;

- administrative boards;

- High Commercial Court;

- appeal courts;

- local economic courts.

The main task of the authorized bodies is the renewal of the violated interests of business entities, the suspension of offenses, as well as the impact on the offender in order to prevent such violations in the future.

**Abstracts:**

1. Legal status of the Antimonopoly Committee of Ukraine.
2. The enterprise is a monopolist.
3. Legal protection against unfair competition.
4. Property liability for violation of antitrust laws.
5. Legislation to combat monopolism.

**Test tasks:**

1 Functions of the Antimonopoly Committee of Ukraine:

- a) the implementation of state control over compliance with antitrust laws;
- b) compensation for losses to affected business entities;
- c) apply to the court or the economic court with claims (statements) in connection with violations of the antimonopoly legislation;
- d) the application of criminal sanctions to offenders?

2. Which state bodies are authorized to provide protection in case of violation of the antimonopoly legislation of Ukraine:

- a) Antimonopoly Committee of Ukraine;
- b) The Supreme Economic Court;
- c) Arbitration courts;
- d) local economic courts?

3. In what cases is the forced division of business entities not applicable:

- a) the impossibility of organizational or territorial separation of enterprises or structural divisions;
- b) the presence of close technological communication of enterprises;
- c) the establishment of legislative prohibitions on such a division of a particular subject;
- d) in case of replacement with a fine?

4. A business entity occupies a monopoly (dominant) position in the product market if:

- a) in this market he has no competitors;
- b) does not experience significant competition;
- c) part of the business entity in the goods market exceeds 35%;
- d) part of the business entity in the product market exceeds 50%;
- e) part of the business entity in the product market exceeds 51%?

2. For violation of antitrust laws, the following types of sanctions are applied:

- a) property nature;
- b) administrative penalties;
- c) criminal penalties;
- d) labor penalties?

### **Tasks:**

Task 1. The only dairy plant in the Balakleysky district set prices for milk suppliers one and a half times lower than in other areas. Vendors located close to the dairy, unable to transport milk to other dairies over a considerable distance and lack of appropriate transport, are forced to deliver milk at these prices. However, a group of farmers, not agreeing with the losses from the sale of milk at unreasonably low prices, complained to the Antimonopoly Committee of Ukraine with a complaint about the actions of the dairy plant.

1. Are there any signs of an economic violation in the actions of the dairy? 2. Under what conditions can legal sanctions be applied to the dairy?

### **Task 2**

PJSC «Ugolresursy», which occupies a monopoly position in the coal supply market, when concluding an agreement on the supply of coal, obliged consumers of its products along with coal to acquire a project for the efficient use of coal that it developed, which was reflected in the above agreement.

1. Are the actions of PJSC «Ugolresursy» lawful? 2. Is there legal liability for actions committed by the above PJSC, and if so, which one?

## **Topic 14. Legal regulation of bankruptcy.**

1. The concept of bankruptcy in economic relations.
2. The stages of bankruptcy proceedings.
3. The concept and content of rehabilitation.
4. The concept and content of the liquidation of the debtor.
5. Settlement.

### **1. The concept of bankruptcy in economic relations.**

Bankruptcy as one of the legal grounds for the liquidation of enterprises is regulated by the Economic Code of Ukraine (Chapter 23). The procedure and conditions for declaring business entities bankrupt in order to satisfy the claims of creditors are regulated by the special Law of Ukraine of 14.05. 1992, «On the resumption of the solvency of the debtor or declaring it bankrupt.»

*The insolvency of a business entity* is the failure of the business entity after the due date to fulfill its monetary obligations to other persons, the territorial community or the state other than through the resumption of its solvency.

*Bankruptcy* is the insolvency of a debtor recognized by an economic court to resume its solvency and satisfy the claims of creditors recognized by the court other than through the application of a liquidation procedure.

*A debtor* is a business entity incapable of fulfilling its monetary obligations to creditors in the amount of over 300 minimum wages: including an obligation to pay taxes and fees (mandatory payments), for 3 months after the due date for their payment.

*The debtor the relevant entity* is considered at all stages of the bankruptcy case, bankrupt - after the economic court decides to declare the debtor bankrupt.

*The creditors of insolvent debtors* are entities that have confirmed, in accordance with the law, requirements for the debtor regarding obligations, including creditors whose claims are fully or partially secured by the mortgage.

*The subject of bankruptcy* can only be a business entity. Treasury enterprises, as well as separate structural divisions of an economic organization, cannot be declared bankrupt.

The founders (participants) of a business entity, the owner, state authorities and local authorities endowed with economic competence, within their powers, are required to take timely measures to prevent bankruptcy. The legislation provides for *two types of extrajudicial procedures* that can be carried out with the aim of preventing bankruptcy:

- the provision of financial assistance in an amount sufficient to pay off its obligations to creditors, including the obligation to pay taxes, fees (mandatory payments);

- the resumption of solvency of this entity (pre-trial rehabilitation) is a system of measures to resume the solvency of the debtor, which includes reorganization; organizational, economic, managerial, investment, technical, financial and economic, legal measures in accordance with the law before the commencement of bankruptcy proceedings.

The basis for applying bankruptcy to a business entity is an economic factor - insolvency to fulfill monetary obligations. A bankruptcy case shall be instituted by an economic court if the indisputable claims of the creditor (s) against the debtor collectively amount to at least 300 minimum wages that were not satisfied by the debtor within 3 months after the deadline set for their repayment, unless otherwise provided by law.

*Monetary obligation* - the obligation of the debtor to pay the creditor a certain amount of money. The composition and size of monetary obligations, including the amount of debt for the transferred goods, work performed and services rendered, the amount of loans, taking into account the interest that the debtor is required to pay, are determined on the day the bankruptcy case is filed with the economic court.



## 2. The stages of bankruptcy proceedings

The actual basis for initiating bankruptcy proceedings can only be a written application to the economic court, which is called the «bankruptcy petition». With such a statement, the economic court may apply:

- *any of the creditors*. Lenders have the right to combine their claims against the debtor and apply to the court with one statement that is signed by all creditors who have combined their claims;

- *the debtor on his own initiative* (in the presence of property sufficient to cover legal costs).

At the same time, *the debtor is obliged to apply to the economic court within one month with an application to initiate bankruptcy proceedings if:*

- the satisfaction of the requirements of one or more creditors will lead to the inability to fulfill the debtor's monetary obligations in full to other creditors;

- the body of the debtor, authorized in accordance with the constituent documents or legislation to make a decision on the liquidation of the debtor, has decided to appeal to the economic court with a statement by the debtor to initiate bankruptcy proceedings;

- upon liquidation of the debtor that is not related to the bankruptcy procedure, the impossibility of the debtor to satisfy the claims of creditors in full has been established;

- in other cases provided by law.

Bankruptcy proceedings are carried out by economic courts. In cases provided for by law, such procedures apply to an insolvent debtor.

***Debtor property management*** is a system of measures to supervise and control the management and disposal of the debtor's property in order to ensure the preservation and effective use of the debtor's property assets and analyze its financial condition.

Disposal of property of a debtor is the first judicial procedure that applies to it. It is not carried out only in cases of a simplified bankruptcy procedure, as well as for citizen-entrepreneurs.

### ***Objectives of the debtor property management procedure:***

- preservation of property assets of the debtor;
- identification of creditors;
- compilation and approval of the register of monetary claims of creditors;
- holding the first general meeting of creditors;
- deciding on the transition to the next stage of bankruptcy proceedings.

The term of this procedure is 6 months and may be extended or shortened by the court at the request of the committee of creditors, the property manager or the

owner. From the moment the bankruptcy case is opened, the court introduces a moratorium on satisfying the property claims of creditors, the deadline for which is due on the eve of the moratorium.

*At a preliminary court hearing*, which should take place no later than 30 days after the initiation of bankruptcy proceedings, it is decided: a general or simplified procedure will be conducted, circumstances will be clarified that may impede the transition to the next stage of the bankruptcy process - publication of a statement on the official press bankruptcy proceedings. Such circumstances may be: repayment of claims by the debtor, withdrawal of an application for bankruptcy proceedings and the like.

If there are no obstacles, the court shall render a decision determining the amount of claims of creditors who have filed an application for bankruptcy proceedings; the date the property manager draws up the register of creditors claims, which must be drawn up and submitted to the economic court for approval no later than 2 months and 10 days after the date of the preliminary court hearing; the date of the next court session, which should take place no later than 3 months after the date of the preliminary court session; the date of convocation of the first general meetings of creditors, which should be held no later than 3 months and 10 days after the date of the preliminary court hearing; the date of the court session at which a decision will be made on the debtor's resolution or on declaring the debtor bankrupt and the opening of the liquidation procedure, or the termination of the bankruptcy case, which should take place no later than 6 months after the date of the preparatory court session.

The identification of creditors and investors is carried out by the submission by creditors within one month from the date of publication of the bankruptcy announcement to the economic court of applications for monetary claims against the debtor and documents that confirm them, and by investors to the property manager of applications for participation in the debtor's rehabilitation.

*At a preliminary meeting of the economic court*, applications from all creditors are considered and a decision is made that notes the amount of recognized claims of creditors, which are included by the property manager in the register of claims of creditors, and sets the date for holding meetings of creditors.

The holding of meetings of creditors shall be carried out no later than 3 months and 10 days after the date of the preliminary meeting. The property manager informs the creditors in accordance with the register of creditors' claims about the place and time of the creditors' meetings and organizes their holding. At the first meetings of creditors, a committee of creditors is formed (no more than 7 persons), its powers are determined.

The final stage of the disposition procedure is a court session at which a decision is made on the introduction of a reorganization procedure or the opening of a liquidation procedure. If before the court session a settlement was concluded or the debt to creditors was paid off, the bankruptcy proceedings are terminated.

### **3. The concept and content of rehabilitation.**

**Remediation** – is a system of measures that are carried out during the bankruptcy proceedings in order to prevent the debtor from being declared bankrupt and liquidate, aimed at improving the financial and economic condition of the debtor, as well as pleasing, in whole or in part, creditors' claims by lending, restructuring the enterprise, debts and capital and (or) changes in the organizational and legal and production structures of the debtor.

The duration of the rehabilitation process is 12 months and can be continued for no more than 6 months.

Remediation is introduced by the economic court at the request of the creditors committee and proceeds according to the disposition procedure. From the moment of introduction of the reorganization procedure, the powers of the debtor's leader cease, they pass to the reorganization manager. The owner of the property does not have the right to limit the authority of the reorganization manager regarding the disposal of property.

The rehabilitation process is implemented through the rehabilitation plan, which contains a comprehensive program of financial recovery of the debtor and the use of special measures to resume its solvency with an indication of the period of their implementation.

The rehabilitation plan is developed by the arbitration manager within 3 months from the date of the announcement of the rehabilitation procedure. This plan is considered at a meeting of the committee of creditors, which should take place within four months from the date of the introduction of the reorganization procedure. If the rehabilitation plan is approved by the committee of creditors (by more than half of the votes), then it will be submitted to the economic court within 5 days.

If, within 6 months from the date of the introduction of the reorganization procedure, the reorganization plan is not submitted to the court, the court decides to declare the debtor bankrupt and opens the liquidation procedure.

Based on the results of the rehabilitation, the arbitration manager shall provide a written report to the meetings of creditors no later than 15 days before the expiration of the established period of the rehabilitation process or if there are grounds for its early termination. After the meetings, the report of the arbitration

manager and the minutes of the meetings of creditors are submitted to the economic court no later than 5 days after the meetings. If the solvency of the debtor is really resumed, then the court approves the report of the manager of the rehabilitation, which is the basis for terminating the proceedings.

In the case of a petition of creditors' meetings, refusals to approve the report of the reorganization manager, non-submission of this report on time or no settlements with creditors on time, the economic court declares the debtor bankrupt and opens the liquidation procedure.

#### **4. The concept and content of the liquidation of the debtor.**

**Liquidation** - termination of activity of a business entity recognized as bankrupt by an economic court in order to carry out measures to satisfy the claims of creditors recognized by the court by selling its property.

This is the final procedure and you can get out of it only through a settlement.

**The liquidation procedure opens in the event of:**

- when the committee of creditors tries to introduce such a procedure;
- when the results of the rehabilitation were unsatisfactory;
- when the court applies simplified bankruptcy procedures;
- bankruptcy of citizens-subjects of entrepreneurial activity.

The total term of the liquidation procedure is 12 months. If necessary, the court may continue this period for 6 months.

**Stages of the liquidation procedure:**

- introduction of the procedure;
- identification and assessment of the liquidation mass;
- sale of property of the debtor;
- satisfaction of the claims of creditors;
- approval of the liquidator report.

Within 5 days from the date of the court ruling on declaring the debtor bankrupt, the liquidator is obliged to submit to the official press body statements on declaring the debtor bankrupt. Within one month from the date of publication, creditors must apply to the court with a statement of their claims against the debtor.

From the moment a ruling on declaring bankrupt is issued, an enterprise gains a new legal status - *bankruptcy status*; entrepreneurial activity of a bankrupt ends with the end of the technological cycle for the manufacture of products in case of the possibility of their sale; the deadline for the fulfillment of all monetary obligations of the bankrupt and obligations regarding the payment of taxes and fees (obligatory payments) is considered to be such that it has arrived; the forfeit (penalty, interest),

interest and other economic sanctions for all types of bankrupt debt are stopped; information about the financial situation of the bankrupt ceases to be confidential or contain trade secrets.

The liquidator shall settle settlements with creditors in accordance with the register of their claims, with the exception of privileged creditors.

The sequence of sending funds received from the sale of bankruptcy property to satisfaction of creditors' requirements established in accordance with Art. 31 of the Law:

- *first of all*, the requirements secured by the mortgage, the payment of the severance pay to the released bankrupt employees, including the reimbursement of the loan received for these purposes, as well as the costs associated with the implementation of the bankruptcy case in the economic court and the work of the liquidation commission, are satisfied:

- *in the second* - claims that arose from bankrupt obligations to employees of a bankrupt enterprise (with the exception of the return of contributions of members of the labor collective to the authorized capital of the enterprise), obligations that arose as a result of harm to the life and health of citizens by capitalizing the relevant payments in the manner established by the Cabinet of Ministers of Ukraine, as well as the requirements of citizens of trustees (investors) of trust companies or other business entities that attracted and property (means) of depositors' trusts);

- *in the third* - requirements regarding the payment of taxes and fees (mandatory payments);

- *in the fourth* - claims of creditors that are not secured by a mortgage, including claims of creditors that arose from obligations in the procedure for managing the property of the debtor or in the procedure for reorganizing the debtor;

- *in the fifth* - requirements for the return of contributions of members of the labor collective to the authorized capital of the enterprise;

- *sixth*, other requirements are met.

The requirements of each next stage are satisfied to the extent that funds from the sale of the bankrupt's property are received into the account after full satisfaction of the requirements of the previous stage.

In case of insufficient funds received from the sale of the property of a bankrupt, in order to fully satisfy all the claims of one priority, claims are satisfied in proportion to the amount of claims that belongs to each creditor of one priority.

Claims stated before the deadline set for their submission are not considered and deemed to be extinguished. Claims not recognized by the economic court, declared in general and not satisfied due to insufficiency of property are also considered to be extinguished.

The final stage of the liquidation procedure is the approval by the economic court of the liquidator's report, which is the basis for the termination of the bankruptcy proceedings.

If, after the completion of the liquidation procedure, the bankrupt legal entity has no property left, the court shall make a decision on the liquidation of the bankrupt legal entity. In cases where the bankrupt's property is sufficient to satisfy the requirements of creditors, it is considered such that it has no debts and can carry out entrepreneurial activities.

## **5. Settlement**

**Settlement** - an agreement between the debtor and creditors regarding the postponement and (or) installment payment, as well as forgiveness (write-off) by the creditors of the debtor's debt, which is drawn up by agreement of the parties.

An amicable agreement may be concluded at any stage of bankruptcy proceedings, subject to the consent of all creditors whose requirements are secured by the mortgagee of the debtor's property.

Most often, it is used in the bankruptcy of enterprises that produce unprofitable products, where the reorganization procedure cannot be applied.

An amicable agreement may be concluded only regarding the requirements secured by the mortgage, the requirements of the second and next stages determined by Article 31 of the law.

Unilateral rejection of a settlement agreement is not allowed.

The settlement agreement should contain a provision on the size, procedure and terms of fulfillment of the debtor's obligations; deferral or installment plan or forgiveness (cancellation) of debts or part thereof.

The arbitration manager must submit an application for approval of the amicable settlement to the economic court within 5 days from the date of conclusion of the settlement agreement.

The approval by the economic court of a settlement agreement is the basis for the termination of bankruptcy proceedings. If the economic court renders a decision refusing to approve the settlement agreement, the settlement agreement shall be deemed not concluded.

At the request of any of the creditors, the settlement agreement may be invalidated by the economic court if:

- the debtor submitted inaccurate information about his property in the balance sheet or in other documents that indicate the financial and property condition of the debtor (bankrupt);

- the implementation of the settlement agreement will lead the debtor to bankruptcy and the like.

The settlement agreement may be terminated by decision of the economic court in the event of:

- non-fulfillment by the debtor of the terms of the settlement agreement regarding not less than 1/3 of the claims of the creditors;
- performance by the debtor of actions that prejudice the rights and legitimate interests of creditors.

The recognition of the settlement agreement as invalid and its termination is the basis for the resumption of bankruptcy proceedings.

**Abstracts:**

1. The elimination of business entities.
2. Restoring the solvency of the debtor.
3. Liquidation procedure for declaring a debtor bankrupt.
4. Legal characteristics of the stage of rehabilitation.
5. The legal nature of the settlement agreement.

**Test tasks:**

1. The stages of the liquidation procedure are:
  - a) the sale of property of the debtor;
  - b) approval of the liquidator's report;
  - c) evaluation of the liquidation mass;
  - d) sale of liquidation mass?
2. The concept of what stage of the bankruptcy procedure is given: «a system of measures that are carried out during the bankruptcy proceedings in order to prevent the debtor from being declared bankrupt and liquidate, aimed at improving the financial and economic condition of the debtor, as well as the full or partial satisfaction of the claims of creditors by lending, restructuring the enterprise, debts and capital and (or) changing the organizational, legal and production structures of the debtor»:
  - a) rehabilitation;
  - b) settlement;
  - c) liquidation;
  - d) write-off?
3. Are cases of recognition by a court of invalidity of a settlement agreement correctly indicated:

- a) the submission by the debtor of inaccurate information about his property;
  - b) the submission by the debtor of inaccurate information about the number of creditors;
  - c) the submission by the debtor of inaccurate information about the property of the creditors;
  - d) non-fulfillment of the settlement agreement by the debtor?
4. Are the grounds for termination by the court of a settlement agreement correctly indicated:
- a) non-fulfillment of the settlement agreement by the debtor to at least 1/2 creditors;
  - b) non-fulfillment of the settlement agreement by the debtor to at least 1/3 of the creditors;
  - c) the submission by the debtor of inaccurate information about his property;
  - d) statement of the creditor;
  - e) statement of the debtor?
5. In what turn are the requirements of employees of the bankrupt enterprise satisfied:
- a) in the first;
  - b) in the second;
  - c) in the third;
  - d) in the fourth?

**Tasks:**

Task 1. The state aircraft building enterprise, having no possibility (due to lack of necessary funds) to pay its creditors during the last six months, as well as in connection with the refusal of the Ministry, which was in charge of this company to provide the latter with financial assistance, applied to the economic court with a petition for initiating bankruptcy proceedings against the enterprise. Attached to the application were: copies of constituent documents, balance sheet for the last financial and economic year, list of creditors of the enterprise.

What court procedures can be applied to the debtor enterprise?

Task 2. PJSC «Export» filed with the economic court a petition for declaring LLC «Service» bankrupt, because according to the reconciliation act of the settlements, the latter had a debt of 24 thousand UAH. was not paid within three months.

1. What decision should the economic court make?
2. What are the conditions for initiating bankruptcy proceedings?



## **Topic 15. Legal regulation of foreign economic activity.**

1. The concepts and principles of foreign economic activity.
2. Subjects of foreign economic activity.
3. Types of foreign economic activity.
4. Licensing and quotas of foreign economic activity.
5. The concept of foreign investment and the activities of special economic zones in Ukraine.

### **1. The concepts and principles of foreign economic activity.**

*The foreign economic activity of business entities is economic activity*, which in the process of its implementation needs to cross the customs border of Ukraine with property and (or) labor.

General conditions and the procedure for conducting foreign economic activity by business entities are determined by the Economic Code of Ukraine, the Law of Ukraine «On Foreign Economic Activity» and other regulatory legal acts.

*Foreign economic activity is carried out according to the principles of:*

- sovereignty of the people of Ukraine in the implementation of foreign economic activity;
- freedom of foreign economic entrepreneurship;
- legal equality;
- the rule of law;
- protection of interests of subjects of foreign economic activity;
- equivalence of exchange, inadmissibility of dumping when importing and exporting goods.

### **2. Subjects of foreign economic activity.**

*The subjects of foreign economic activity are:*

1) *business organizations* - legal entities, state, municipal and other enterprises, as well as other legal entities that carry out business activities and are registered in the manner prescribed by law;

2) *citizens of Ukraine*, foreigners and stateless persons who carry out business activities and are registered as entrepreneurs in accordance with the law;

3) *units (structural units)* of foreign business entities that are not legal entities under the laws of Ukraine (branches, branches, etc.), but have a permanent location in the territory of Ukraine and are registered in the manner prescribed by law.

Foreign economic organizations that have the status of a legal entity formed in Ukraine in accordance with the law, state authorities or local governments can also take part in foreign economic activity.

The subjects of foreign economic activity can carry out any of its types, not prohibited directly and in exceptional form by the laws of Ukraine.

### **3. Types of foreign economic activity.**

*The types of foreign economic activity, in particular, include:*

- *export and import of goods, capital and labor;*
- *the provision by subjects of foreign economic activity of Ukraine of services to foreign business entities and vice versa.* Among these services are production, freight forwarding, insurance, consulting, marketing, export, intermediary, brokerage agent, consignment, managerial, accounting, audit, legal, tourist and others.;
- scientific, scientific-technical, scientific-industrial, industrial, educational and other types of cooperation with foreign business entities;
- study and training of specialists on a commercial basis;
- International financial and securities transactions;
- credit and settlement operations, the creation of banking, credit and insurance institutions, both outside Ukraine and on its territory;
- joint business activities, including the creation of joint ventures;
- entrepreneurial activity related to the granting of licenses, patents, know-how, trademarks and other non-property objects of ownership;
- organization and implementation of activities in the industry of exhibitions, auctions, tenders, conferences, symposia and the like; organization and implementation of wholesale, consignment and retail trade in Ukraine;
- commodity exchange barter operations;
- rental, including leasing, operations;
- operations for the acquisition, sale and exchange of currencies at foreign exchange auctions, currency exchanges and the interbank foreign exchange market;
- other types of foreign economic activity.

State regulation of foreign economic activity is aimed at protecting the economic interests of Ukraine, the rights and legitimate interests of subjects of foreign economic activity, creating equal conditions for the development of all types of entrepreneurship in the field of foreign economic relations and the use of incomes and investments by subjects of foreign economic activity, encouraging competition and limiting the monopolism of economic entities in the sphere of foreign economic activity activities.

State regulation of foreign economic activity is carried out by the Verkhovna Rada of Ukraine, the Cabinet of Ministers of Ukraine, the National Bank of Ukraine, the State Customs Service of Ukraine in accordance with their competence, as defined by Art. 9 of the Law «On Foreign Economic Activity» as well as local authorities.

One of the forms of state regulation of foreign economic activity is the establishment of a regime for the implementation of foreign exchange transactions in Ukraine. Such a regime is established by the Decree of the Cabinet of Ministers of Ukraine of February 14, 1993 «On the system of currency regulation and currency control».

The next form is the customs regulation of foreign economic activity, which is carried out in accordance with the Customs Code of Ukraine, the Law of Ukraine «On Foreign Economic Activity», other laws, the Unified Customs Tariff and applicable international treaties ratified by the Verkhovna Rada of Ukraine.

#### **4. Licensing and quotas of foreign economic activity.**

Licensing and quotas for exports and imports as a form of state regulation of foreign economic activity are introduced by Ukraine independently in cases provided for in Art. 16 of the Law «On Foreign Economic Activity». In accordance with the noted article in Ukraine, the following types of **export (import) licenses are introduced:**

- *general license* - an open permit for export (import) operations with a certain product (goods) and (or) with a specific country (group of countries) during the period of the licensing regime for this product (goods);

- *a one-time (individual) license* - a one-time permit, which is of a nominal nature and is issued for each individual transaction by a specific subject of foreign economic activity for a period not less than necessary for an export (import) operation;

- *open (individual) license* - permission to export (import) goods for a certain period (but not less than one month) with the definition of its total volume.

In addition, licenses such as *anti-dumping* (individual), *compensation* (individual) and *special* (individual) licenses may be established.

Quoting is carried out by limiting the total quantity and (or) the total customs value of goods that can be imported (exported) during a certain period, by establishing a regime for issuing individual licenses, and the total volume of export (import) under these licenses should not exceed the amount of the established quota . In Ukraine, the following types of export (import) quotas (contingents) are being introduced:

- global quotas (contingents) - quotas that are set for goods (goods) without specifying specific countries (groups of countries) to which goods (goods) are exported or from which they (they) are imported;

- group quotas (contingents) - quotas that are set for the goods indicating the group of countries to which the goods are exported or from which they are imported;

- individual quotas (contingents) - quotas that are set for a product with an indication of a specific country to which the product can be exported or from which it can be imported.

In addition, anti-dumping, countervailing and special quotas have been introduced.

For each type of product, only one type of quota is established. The legal form for the implementation of foreign economic activity is the foreign economic agreement (contract).

The foreign economic agreement (contract) is concluded in writing. The rights and obligations of the parties to a foreign economic agreement (contract) are determined by the law of the place of its conclusion, unless the parties have agreed otherwise.

The Cabinet of Ministers of Ukraine in order to ensure compliance of foreign economic agreements (contracts) with the legislation of Ukraine may introduce their state registration. The legal basis for this is the decree of the President of Ukraine «On the accounting of certain types of foreign economic agreements (contracts) in Ukraine» dated November 7, 1994 and the order of the Ministry of Economy of Ukraine «On the procedure for registration and accounting of foreign economic agreements (contracts)» dated June 29, 2000.

The form and content of the foreign economic agreement must comply with the Regulation on the forms of foreign economic agreements (contracts), approved by order of the Ministry of Economy of Ukraine of September 6, 2001, which is used when concluding contracts of sale of goods (services, works) and exchange agreements between Ukrainian and foreign business entities activities.

The conditions that should be provided for in the contract include: name, number, date and place of conclusion of the contract (contract); preamble; subject of the contract; quantity and quality of goods (volume of work performed, services provided); (acceptance (delivery) of work or services performed); price and total cost of the contract; terms of payments; terms of acceptance and delivery of goods (works, services); packaging and labeling; force majeure circumstances; sanctions and complaints; judicial settlement of disputes. By agreement of the parties, the agreement may contain additional conditions.

By the Decree of the President of Ukraine «On the Application of the International Rules for the Interpretation of Commercial Terms» of October 4, 1994, with the aim of uniformly interpreting economic terms when concluding contracts that are subject to goods (work, services), the established need for applying the International Rules for the Interpretation of Commercial Terms prepared by the International Chamber of Commerce (hereinafter - INCOTERMS Rules). The INCOTERMS rules («basic supply conditions») were developed by the International Chamber of Commerce and are currently in force in the 2010 edition.

The subjects of foreign economic activity are responsible in the types and forms provided for in Art. 33 of the Law «On Foreign Economic Activity», other laws of Ukraine and (or) foreign economic agreements (contracts).

According to Art. 33 of the Law on Foreign Economic Activities in the field of foreign economic activity, *these types of responsibilities may apply*:

- property liability. It is applied in the form of material compensation for direct, indirect losses, lost profits, material compensation for moral losses, as well as property sanctions;

- criminal liability applies only in cases provided for by the criminal legislation of Ukraine.

According to Art. 37 of the Law on Foreign Economic Activity for violation of this or related laws of Ukraine, **special sanctions** may be applied to entities of foreign economic activity or foreign entities of economic activity:

- the imposition of fines in cases of untimely fulfillment or non-fulfillment by subjects of foreign economic activity and foreign economic entities of their duties in accordance with this or the laws of Ukraine associated with it. The amount of such fines is determined by the relevant provisions of the laws of Ukraine and (or) decisions of the judicial authorities of Ukraine;

- application to specific subjects of foreign economic activity and foreign economic entities of an individual licensing regime in cases of violation by such entities of the provisions of the Law on Foreign Economic Relations regarding the provisions specified therein, which establish certain prohibitions, restrictions or regimes for conducting foreign economic operations with the permission of the state;

- temporary suspension of foreign economic activity in cases of violation of the Law on Foreign Economic Activity or related laws of Ukraine of the implementation of actions that could harm the interests of national economic security.

## **5. The concept of foreign investment and the activities of special economic zones in Ukraine.**

### ***Legal regime of foreign investment***

The general legal, economic and social conditions of investment activity in Ukraine are determined by the Economic Code of Ukraine, the Law of Ukraine of September 18, 1991 «On Investment Activity».

*Investments* - these are all types of property and intellectual values that fit into the objects of entrepreneurial and other types of activity, as a result of which a profit (income) is created or a social effect is achieved.

Investment activity is a set of practical actions of citizens, legal entities and the state regarding the implementation of investments.

Investment activity is carried out on the basis of foreign investment by foreign citizens, legal entities, states and general investment by Ukrainian and foreign citizens, legal entities and states.

Features of the regime of foreign investment in Ukraine are determined by the Law of Ukraine of March 19, 1996 «On the regime of foreign investment», the effect of which applies exclusively to foreign investors and enterprises with foreign investment.

In accordance with this Law, *foreign investors have the right to make investments in Ukraine in the form of:*

- foreign currency, which is recognized as converted by the National Bank of Ukraine;
- Ukrainian currencies - in case of reinvestments in the primary investment object or in any other investment objects in accordance with the legislation of Ukraine, subject to the payment of income tax (income);
- any movable and immovable property and related property rights;
- shares, bonds, other securities, as well as corporate rights (ownership of a part (share) in the authorized capital of a legal entity created in accordance with the laws of Ukraine or the laws of other countries), expressed in converted currency;
- monetary claims and rights to claims for the fulfillment of contractual obligations, which are guaranteed by banks and have a value in converted currency, confirmed in accordance with the laws (procedures) of the investing country or international trade customs;
- any intellectual property rights whose value in converted currency is confirmed in accordance with the laws (procedures) of the investing country or international trade customs, as well as confirmed by an expert assessment in Ukraine, including copyright, rights to inventions, utility models, industrial, legalized in Ukraine samples, signs for goods and services, know-how and the like;

- rights to carry out economic activities, including rights to use subsoil and use natural resources provided in accordance with legislation or agreements, the value of which in converted currency is confirmed in accordance with the laws (procedures) of the investing country or international trade customs;

- other values in accordance with the legislation of Ukraine.

*Foreign investment in Ukraine can be carried out in various forms:*

- partial participation in enterprises that are created in conjunction with Ukrainian legal entities and individuals, or the acquisition of part of existing enterprises;

- the creation of enterprises that are wholly owned by foreign investors, branches and other separate subdivisions of foreign legal entities, or the acquisition in full ownership of existing enterprises;

- the acquisition of real estate or movable property not prohibited by the laws of Ukraine, including houses, apartments, premises, equipment, vehicles and other property objects, by directly obtaining property and property complexes or in the form of shares, bonds and other securities;

- the acquisition, on their own or with the participation of Ukrainian legal entities or individuals, of rights to use land and use natural resources in Ukraine;

- acquisition of other property rights;

- other forms that are not prohibited by the laws of Ukraine, including without creating a legal entity on the basis of agreements with business entities of Ukraine.

In general, with regard to foreign investments and their forms of implementation in Ukraine, a national regime of investment and other economic activities is established. Exceptions are provided by applicable law and international treaties of Ukraine.

Wanting to attract foreign investment to Ukraine, the state has established certain state guarantees for the protection of foreign investment:

- guarantees against changes in legislation;

- guarantees regarding forced exceptions, as well as illegal actions of state bodies and their officials;

- Compensation and compensation for losses to foreign investors incurred as a result of actions or inaction of state bodies of Ukraine or their officials;

- guarantees in case of termination of investment activities;

- guarantees for the transfer of income, income and other funds received as a result of foreign investment.

The state registration of foreign investments is carried out in accordance with Section III of the Law of Ukraine «On the regime of foreign investment» and the Regulation on the procedure for state registration of foreign investments, approved by resolution of the Cabinet of Ministers of Ukraine of August 7, 1996 No. 928.

Such registration is carried out by the Council of Ministers of the Autonomous Republic of Crimea, regional, Kiev and Sevastopol city state administrations after the actual implementation of investments.

The state registration authority records the date of receipt of documents in the state registration journal of foreign investments made. Within 3 working days, starting from this date, it considers the submitted documents and makes a decision on the registration of a foreign investment or on its refusal.

The specifics of foreign investment regulation in special (free) economic zones is established by the legislation of Ukraine on special (free) economic zones.

*A special (free) economic zone (CEZ)* is considered to be a part of the territory of Ukraine where a special legal regime of economic activity is established, a special procedure for the application and operation of Ukrainian legislation. On the territory of the special (free) economic zone, preferential customs, tax, monetary, financial and other business conditions for domestic and foreign investors may be introduced.

SEZs are created with the aim of attracting investments and their effective use, intensifying entrepreneurial activities together with foreign investors with the aim of increasing the export of goods, delivering high-quality products and services to the domestic market, introducing new technologies, developing market infrastructure, improving the use of natural, material and labor resources, accelerate the socio-economic development of Ukraine.

The legal regime of the CEZ in Ukraine is determined by the Economic Code of Ukraine, the Law of Ukraine of October 13, 1992 «On the General Basis for the Creation and Functioning of Special (Free) Economic Zones», and the Resolution of the Cabinet of Ministers of Ukraine of March 14, 1994 No. 167 «On the Concept for the Creation of Special (free) economic zones in Ukraine».

The territory and status of a special (free) economic zone, including the period for which it is created, are determined by a separate law for each special (free) economic zone.

According to the Economic Code of Ukraine, the Law of Ukraine «On the General Basis for the Creation and Functioning of Special (Free) Economic Zones» in Ukraine, depending on the economic orientation and economic and legal conditions of activity, the following types of SEZ can be created:



- foreign trade zones - a part of the territory of the state where goods of foreign origin can be stored, bought and sold without paying duty or customs duties or with their deferral. Forms of organization of such zones may be free ports (port-free), free customs zones (free zones) and customs trains;

- integrated production zones - part of the state's territory where a special (preferential tax, monetary, financial, customs and the like) mode of economic activity is introduced with the aim of stimulating entrepreneurship, attracting investments to priority sectors of the economy, expanding foreign economic relations, borrowing new technologies, ensuring employment of the population. They can take the form of export production zones, where export production is primarily developed, oriented to the processing of our own raw materials, and export-oriented zones, the main function of which is the development of import-substitution production;

- scientific and technical zones are SEZ, the special legal regime of which is focused on the development of scientific and production potential. They can exist in the form of regional innovation centers-technopolises, areas of intensive scientific development, high-tech industrial complexes, research and production parks (technological, research, industrial, agricultural parks), as well as local innovation centers and strong innovation points;

- tourist and recreational areas are CEZs that are created in regions that have a rich natural, recreational and historical-cultural potential, with its purpose of efficient use and conservation, as well as enhancing entrepreneurial activity (including involving foreign investors) in the field recreational tourism business;

- bank-insurance (offshore) zones - these are zones in which a particularly favorable regime for banking and insurance operations in foreign currency is introduced to serve non-residents. Offshore status is granted to banking and insurance institutions that were created with the participation of only non-residents and serve only their business activities that are carried out outside of Ukraine;

- border trade zones - part of the state's territory at the borders with neighboring countries, where a simplified border crossing and trade procedure is in place.

### **Abstracts:**

1. The concept and content of foreign economic agreements (contracts).
2. Commodity exchange foreign economic operations.
3. Investing abroad.
4. Joint investment activity.
5. The rules of INCOTERMS 2010.

**Test tasks:**

1. The subjects of foreign economic activity are:

- a) business organizations;
- b) citizens of Ukraine, foreigners and stateless persons;
- c) the State of Ukraine;
- d) foreign states?

2. Investors have the right to make investments in Ukraine in the form of:

- a) foreign currency, which is recognized as converted by the NBU;
- b) any movable and immovable property;
- c) intellectual property rights;
- d) performance of work, provision of services?

3. Which of the types of SEZ are named correctly:

- a) foreign trade zones;
- b) scientific and technical zones;
- c) banking insurance;
- d) commercial?

4. Foreign investment in Ukraine may take the forms:

- a) partial participation in enterprises that are created in conjunction with Ukrainian legal entities and individuals;
- b) the acquisition of real estate or movable property not prohibited by the laws of Ukraine;
- c) the acquisition of rights to use land and the use of natural resources in Ukraine;
- d) the acquisition of defense enterprises?

5. Types of export (import) licenses:

- a) general license;
- b) ordinary license;
- c) open (individual) license;
- d) a one-time license?

**Tasks:**

Task 1. Between the company «Ekos» and a non-resident a foreign economic contract for the supply of goods. Within the 90-day period determined by law, a non-resident could not pay off the Ekros enterprise, and therefore the tax inspectorate charged the last penalty. The company filed a lawsuit with the economic court to invalidate the decision of the tax inspectorate, citing the fact that it could not be found guilty of violating the 90-day period, since the creditor was unable to pay on time due to the crisis in the foreign exchange market of Ukraine.

What are the conditions for prosecuting a resident for violation of the term of payment under an export contract?

Task 1. The exporting enterprise for the implementation of foreign economic activity should have received an individual license from the NBU. However, it did not contact this organization, but carried out foreign economic operations without a license on 1.01.2007 in the amount of 500 thousand dollars. The dollar exchange rate to the hryvnia as of January 1, 2007 was 5.05 UAH / USD. When checking by employees of the state tax service on December 15, 2008, such a violation was discovered. The dollar against the hryvnia on December 15, 2008 was 7.65 UAH / dollar.

Did the exporting company commit a violation of the current legislation of Ukraine, if so, how should the amount of penalties for violation of the law be calculated.

### **Topic 16. The legal basis for ensuring product quality and protecting consumer rights.**

1. Product quality as an object of economic relations.
2. The concept of state standardization in economic activity.
3. The concept of product certification.
4. The legal status of the consumer. Responsibility for violation of consumer rights.

#### **1. Product quality as an object of economic relations.**

Considerable attention is paid to the problem of product quality, performance of work, and the provision of services, because achieving successes of a socio-economic nature is possible only through the implementation of a policy regarding the proper provision of needs.

*Quality* is the most objective, generalizing indicator of scientific, technical, economic, social, social progress.

The Decree of the Cabinet of Ministers of Ukraine «On State Supervision of Compliance with Standards, Norms and Rules and Responsibility for Their Violation» of April 8, 1993 treats product quality as a combination of properties that reflect safety, novelty, durability, reliability, economy, aesthetics, and environmental friendliness of products etc., which provide her with the ability to satisfy the consumer in accordance with her intended purpose.

*Quality* management is an integral system of different methods of influence in the sphere of production of products, performance of work, provision of services, which ensures the achievement of the maximum economic effect.

The main forms of state regulation of quality are organizational (quality control), economic and legal (standardization, certification, licensing and a system for ensuring the uniformity of measurements).

## **2. The concept of state standardization in economic activity.**

**Standard** - it is a sample, model, standard, taken as the initial one, for comparison with other similar objects.

The standard can be developed both for tangible objects, and for objects of various intangible nature.

As a normative and technical document, the standard establishes a set of norms, rules, requirements for the standardization object and is approved by the competent authority.

The standardization system is aimed at ensuring:

- implementation of the only technical policy in the field of standardization, certification and metrology;
- protect the interests of consumers and the state on the safety of products for life, health, property of citizens, environmental protection;
- interchangeability and compatibility of products, their unification;
- saving all types of resources, improving technical and economic indicators of production, and more.

***The application of standards is mandatory for:***

- business entities, if the standards are referenced in regulatory legal acts, agreements;
- the manufacturer or supplier of the product, if he has drawn up a declaration of conformity of the product to certain standards or applied the designation of standards in its labeling;
- manufacturer or supplier, if its products are certified according to the requirements of the standards.

The legal and organizational foundations of standardization are established by the Law of Ukraine «On Standardization» of May 17, 2001 and the Decree of the Cabinet of Ministers of Ukraine «On Standardization and Certification» of May 10, 1993.

Normative documents regarding standardization are: State standards of Ukraine (they are equated with state building norms and rules, as well as state classifiers of technical, economic and social information; industry standards; enterprise standards; code of established practice; technical conditions).

State standards of Ukraine and the rules for their use in Ukraine are established by the State Committee of Ukraine for Standardization, Metrology and Certification.

***State standards are developed on:***

- organizational, methodological and in general terms technical objects (scientific and technical terminology, classification and coding of technical, economic and sociological information, technical documentation, organization of work from metrology, reliable reference data on the properties of materials and substances);

- products in general terms of machine-building use (bearings, tools, fasteners, etc.);
- products for the population and the national economy, and more.

State standards contain mandatory (ensure product safety for life, health and property of citizens, environmental protection; safety and health requirements; requirements and provisions that ensure the reliability and uniformity of measurements) and recommended requirements.

Industry standards are developed in the absence of state standards or, if necessary, the establishment of higher requirements than those contained in State standards. Mandatory requirements of industry standards are fulfilled by entities that are part of the management of the authority that approved them.

Specifications contain requirements that govern the relationship between the supplier and the consumer of the product.

Standards of enterprises are developed and used only at a particular enterprise, based on the need for their application.

The legal foundations of state control and supervision of compliance by business entities with the mandatory requirements of state standards are established by the Decree of the Cabinet of Ministers of Ukraine «On State Supervision of Compliance with Standards, Norms and Rules, and Liability for Violation thereof» dated April 8, 1993.

According to Art. 3 of this Decree, **objects of state observation are:**

- products for industrial purposes, consumer goods, livestock and crop products, food products, including products that have passed certification for compliance with standards, norms and rules;

- imported products - for compliance with the standards, norms and rules in force in Ukraine regarding safety for life, health, property of people, the environment and the like.

To carry out state monitoring, state inspectors of the State Standard of Ukraine have the right:

- free access to production and office premises;
- obtaining the necessary information and materials;
- sampling of products to verify their compliance with standards, norms and rules;

- prohibit the production, storage, transportation, use (operation), sale of products, including imported, in violation of standards, norms and rules;
- to prohibit the production and sale of products, which is subject to mandatory certification, but which it did not pass in a timely manner;
- give binding orders to eliminate violations of standards, norms and rules;
- draw up protocols on administrative offenses in the field of standardization, metrology, product quality;
- send materials to the prosecutor's office to resolve issues of bringing to justice those responsible for violating standards, norms and rules, and the like.

### **3. The concept of product certification.**

Certification of conformity (as defined by the International Organization for Standardization) is an action that certifies with a certificate of conformity or a mark of conformity that a product or service meets a specific standard or other regulatory and technical document.

#### ***The purpose of certification of products, services and works is:***

- preventing the sale of products that are dangerous to life, health, property of citizens and the environment;
- assistance to consumers in the selection of products;
- creation of conditions for the participation of business entities in international economic, scientific and technical cooperation and international trade.

In Ukraine, product certification is divided into mandatory (carried out by accredited implementation laboratories) and voluntary (self-certification, third-party certification).

One of the prerequisites for ensuring production efficiency are accurate and objective measurements.

The legal basis for ensuring the uniformity of measurements is established by the Law of Ukraine «On Metrology and Metrological Activities» of February 11, 1998 and the Decree of the Cabinet of Ministers of Ukraine «On Ensuring the Uniformity of Measurements» of April 26, 1993.

*The main goal of metrological support* – is to improve product quality, improve production efficiency, rational use of material values and energy resources.

#### ***Metrological support consists of such:***

- the scientific basis (the creation of a general theory of measurements; the formation of units of physical quantities and systems of units; the creation of standards and model measuring instruments);
- legislative basis;

- the regulatory basis (state standards and other documents of the state system for ensuring the uniformity of measurements);
- technical basis (DSTU 2682-94 - system of state standards, system of measuring instruments);
- organizational basis (metrological service of Ukraine).

One of the tasks of metrological support is the establishment of units of physical quantities. In Ukraine, the units of the International System of Units adopted by the General Conference on Weights and Measures and recommended by the international organization of legal metrology are used. By decision of the State Standard of Ukraine, units of measurement that are not included in the International System of Units can be allowed to be used in Ukraine.

The Metrological Service of Ukraine consists of the State Metrological Service and Metrological Services of the central executive authorities, enterprises and organizations.

#### **4. The legal status of the consumer. Responsibility for violation of consumer rights.**

One of the main tasks of any state is the protection of consumer rights. Legislation on the protection of consumer rights from goods, works, services of inappropriate quality is a comprehensive legislation that includes regulatory acts and certain legal norms of not only economic but also other branches of law. It is based on the Law of Ukraine «On Protection of Consumer Rights» of May 12, 1991.

State protection is provided by: The State Committee of Ukraine for Consumer Rights Protection and its bodies in the Crimea, regions, cities of Kiev and Sevastopol; State Committee of Ukraine for Standardization, Metrology and Certification, its territorial bodies; State Sanitary Monitoring Institutions of Ukraine; bodies of representative power, state executive power, which are entrusted with control over the quality and safety of goods (works, services); the courts.

The Law enshrines the rights of consumers to comply with the quality of the purchased goods (work performed, services) with the requirements of regulatory documents, the terms of the contract and product information. The manufacturer (contractor) is obliged to ensure the possibility of using the goods (results of work, services) for their intended purpose over the course of their service life, provided for by regulatory documents or established by agreement with the consumer, and in the absence of such terms - for 2 years, and construction projects - 10 years. The sale of goods whose expiration date is prohibited.

In case of purchase of goods of inadequate quality, the consumer has the right, at his choice, to demand from the seller or manufacturer:

- free elimination of product defects within a reasonable time;
- a proportional decrease in its purchase price;
- reimbursement of costs to eliminate the defects of the goods;

In the event that during the established warranty period, significant deficiencies that arose due to the fault of the manufacturer of the goods (seller, contractor) or falsification of the goods, confirmed if necessary by the conclusion of the examination, were detected, the consumer, in the manner and within the time established by law and on the basis of binding on the parties rules or contract, has the right, at his option, to demand from the seller or manufacturer:

- termination of the contract and return of the sum of money paid for the goods;
- Demand the replacement of goods with the same product or similar, from among the goods available to the seller (manufacturer).

On January 25, 1995, the Verkhovna Rada of Ukraine approved the Regulation on the procedure for the temporary cessation of activities of enterprises in the sphere of trade, public catering and services, which systematically sell low-quality goods, violate the rules of trade and provision of services, storage and transportation of goods; Provisions on the procedure for the exclusion of low-quality goods, documents and other items that indicate a violation of consumer rights; Regulation on the termination (prohibition) by business entities of the shipment, sale (sale) and production of goods, performance of work and the provision of services that do not meet the requirements of regulatory documents that protect consumers' rights to the quality of goods, work, services, the national market of the country from unscrupulous manufacturers and sellers.

For business entities that carry out entrepreneurial activities in the field of trade, public catering and services, in case of repeated detection within 90 calendar days of the sale of goods, the provision of services that do not meet the requirements of regulatory documents or do not have documents that confirm their proper quality; non-compliance with the requirements of regulatory documents that regulate the production, storage, transportation, sale of goods, the provision of services, which may be the basis for harming the life, health or property of consumers, is made on the basis of an act of verification of the decision of the state body for the protection of consumer rights on the temporary cessation of activities in order to eliminate the reasons as a result of which low-quality products are systematically sold or produced.

In the event of a repeated, within 365 calendar days, temporary cessation of activity of a business entity, the question of the removal of the head of the business entity from his post or the cancellation of state registration or a special permit (license) for the implementation of the relevant type of entrepreneurial activity is raised.



If the quality of the goods does not meet the requirements of regulatory documents, and their deficiencies cannot be eliminated on the spot, then such consignments are subject to exclusion.

For the application of adequate clear measures aimed at combating low-quality products, the adopted Law of Ukraine «On the exclusion from circulation, processing, disposal, destruction or subsequent use of low-quality dangerous products» dated January 14, 2000

The mechanism for protecting the consumer market from products of inappropriate quality, along with direct legislative norms, includes such a regulator of economic relations as a business agreement, one of the prerequisites if there is a condition for the quality of products, work, services.

The regulation of the procedure for the adoption of products regarding quality The instruction on the procedure for the adoption of industrial products and consumer goods regarding quality, approved by the resolution of the State Arbitration Court under the Council of Ministers of the USSR of April 25, 1966 (with additions and amendments made by the resolution of the State Arbitration of the USSR of November 14, 1974 .), allows to ensure the rational use of production capabilities, preventing the production and sale of low-quality products.

One of the ways to protect the consumer market from low-quality products at present is the system of bar coding of goods, in connection with which the Ministry of Foreign Economic Relations and Trade of Ukraine in accordance with the resolution of the Cabinet of Ministers of Ukraine «On the introduction of bar coding of goods» dated May 29, 1995 was developed and approved by order of August 27, 1996, the Regulation on the bar coding of goods.

The assignment of EAN internal barcodes is carried out by the EAN-Ukraine Association. EAN bar codes mark all goods produced or sold in Ukraine, with some exceptions provided for in the Regulation.

In accordance with the law, various types of liability are provided for an offense in the field of quality assurance:

- criminal liability (Article 147 of the Criminal Code of Ukraine establishes for the release or sale of low-quality or incomplete products in large quantities or such that is harmful to health or resulted in the death of the consumer provides for a punishment of imprisonment of up to 5 years);

- administrative responsibility (Articles 167, 168. 168-1, 169, 170, 170-1 and 172 of the Administrative Code of Ukraine provide for administrative liability of officials, business entities for an offense in the field of standardization, product quality, metrology and certification);

- economic and legal liability (Article 8 of the Decree of the Cabinet of Ministers of Ukraine «On State Supervision of Compliance with Standards, Norms and Rules and Responsibility for Their Violation» establishes the liability of business entities in violation of standards, norms and rules in the form of a fine with mandatory compensation to consumers for damage that arose in connection with a violation of standards, norms and rules; Article 23 of the Law of Ukraine «On Protection of Consumer Rights» provides for the liability of business entities in the form of a fine of 30 to 500% of the cost made or received for the sale of a batch of goods (work, services), depending on the type of offense).

**Abstracts:**

1. Quality control of export-import goods in Ukraine.
2. Confirmation of conformity and certification of products and services in Ukraine.
3. Environmental standards and requirements in your state.
4. Sanitary and veterinary standards and requirements in your state.
5. Pharmacological and sanitary standards and requirements in your state.

**Test tasks:**

1. For which entities the application of standards is mandatory for:
  - a) business entities, if there is a reference to standards in regulatory legal acts, agreements;
  - b) the manufacturer or supplier, if its products are certified according to the requirements of the standards;
  - c) the manufacturer or supplier of the product, if he has drawn up a declaration of conformity of the product to certain standards or applied the designation of standards in its labeling;
  - d) the manufacturer or supplier of products, if he is directly involved in the sale of products?
2. What types of liability are provided for an offense in the field of quality assurance:
  - a) civil law;
  - b) international legal;
  - c) administrative and legal;
  - d) economic and legal?
3. In the case of the purchase of goods of inadequate quality, the consumer has the right, at his choice, to demand from the seller or manufacturer:
  - a) free remedy of defects in the goods within a reasonable time;

- b) a proportional decrease in its purchase price;
- c) reimbursement of expenses for elimination of defects in the goods;
- d) replacement of goods?

4. The purpose of certification of products, services and works is:

- a) preventing the sale of life-threatening products;
- b) assistance to consumers in the selection of products;

c) the creation of conditions for the participation of business entities in international economic, scientific and technical cooperation and international trade;

- d) the limitations of monopoly?

5. What is the service life provided for by legislators for goods in the absence of such periods in the manufacturer's documents:

- a) 1 year;
- b) 2 years;
- c) 10 years
- d) 12 years?

**Tasks:**

Problem 1. The Yalta Canning Factory filed a lawsuit with the Commercial Court regarding violation of the contract agreement concluded with Tomat LLC, which supplied the factory with low-quality ketchup, which the factory was forced to process.

Using current regulations, evaluate the possible legal consequences of this situation.

Task 2. Utility company Telemir. acquired television equipment from LLC Electrotech. 10 days after the conclusion of the transaction, the buyer announced a malfunction of some equipment, and turned to LLC Electrotech to terminate the contract and compensate for the damage caused.

Give a reasoned answer. What rules of law govern these relationships?

## **Control questions**

1. The concept and subject of economic law.
2. Methods of economic law.
3. The principles of economic law.
4. Economic relations.
5. Sources of economic law.
6. The concept and signs of entrepreneurship.
7. Principles of entrepreneurship
8. Creation of business entities.
9. Termination of business entities.
10. Licensing of business activities.
11. The concept and classification of business entities.
12. The concept of the enterprise and its types in economic relations.
13. Enterprise management.
14. The concept of trade secrets of the enterprise.
15. The concept and types of business companies.
16. Characteristics of the joint stock company.
17. Characteristics of a limited liability company.
18. Characteristics of the company with additional responsibility.
19. Characteristics of a full partnership
20. Characteristics of a limited company.
21. Patenting of certain types of economic activity
22. Means of financing the economic activity of the enterprise.
23. The concept and characteristics of a business contract.
24. The form of the economic contract.
25. Types of business contracts.
26. The procedure for concluding a business contract.
27. Characteristics of the supply contract.
28. Characteristics of the contract of carriage in economic relations.
29. Description of the contract of sale of goods.
30. The concept of ownership and forms of ownership in Ukraine.
31. The right to manage property.
32. Tenant is right to leased property.
33. The right to operational property management.
34. The concept of the monopoly position of the enterprise and the types of violations of antitrust laws.
35. Legal status of the Antimonopoly Committee of Ukraine.

36. Responsibility for violation of antitrust laws.
37. Procedure for holding accountable for violation of the Antimonopoly Law.
38. The concept and types of foreign economic activity.
39. The concept of bank credit.
40. The principles of bank lending.
41. The concept and types of bank loan agreement.
42. The concept and functions of economic responsibility.
43. The legal status of non-profit entities of economic law.
44. Types of entrepreneurial activity.
45. The concept of bankruptcy in economic activity.
46. The legal status of an economic court in bankruptcy proceedings.
47. Procedure for the rehabilitation of the enterprise of the debtor.
48. Liquidation procedure in a bankruptcy relationship.
49. Settlement in bankruptcy proceedings.
50. The priority of satisfying the claims of creditors from bankruptcy property.
51. The concept and bodies of the economic contract.
52. Pre-trial settlement of economic disputes.
53. Disputes adjudicated by economic courts.
54. Procedure for resolving economic disputes in economic courts.
55. The content of the decision of the economic court after consideration of the economic dispute.
56. The appeal consideration of the economic dispute.
57. The concept and characteristics of the exchange organization.
58. Types of exchanges in Ukraine.
59. Rights and obligations of participants in exchange trading.
60. Functions of a stock exchange organization.
61. The concept and types of exchange transactions.
62. The concept and features of futures exchange transactions.
63. The procedure for exchange trading.
64. Legal protection of consumer rights in Ukraine.
65. Types of economic responsibility.
66. Means of regulation of foreign economic activity.
67. Characteristics of the lease.
68. Characteristics of the contract of contracting.
69. Features of the foreign economic contract.
70. The concept and types of unfair competition in economic relations.
71. State bodies regulating foreign economic activity.

- 72. Patenting of business activities
- 73. Responsibility for violation of consumer rights.
- 74. The concept and characteristics of certification.
- 75. Licensing and quotas of foreign economic activity.
- 76. Foreign enterprises.
- 77. Enterprises with foreign investment.

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Навчальне видання

ПЕРЕВАЛОВА Людмила Вікторівна  
ЛИСЕНКО Ірина В'ячеславівна  
ЛИСЕНКО Андрій Миколайович  
ГАРЯЄВА Ганна Михайлівна  
ГАЄВАЯ Олександра Валентинівна

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м.Харків, вул.Жон Мироносиць, 10,оф.6, тел.+38(057)714-06-74,+38(050)976-32-87  
copy@vlavke.com