**КОНСПЕКТ ЛЕКЦІЙ**

**з навчальної дисципліни**

**«Договірне право»(англійською мовою)**

«Сontract law»

LAW

**LECTURE 1.**

**CIVIL LAW AS BRANCH of Law**

**1. Subject and method of the civil law.**

**2. Subjects of civil relations.**

**3. The legal body.**

**4. Concept of objects of civil law, their classification.**

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| **The civil law** is a set of civil-law norms which regulate on the beginnings of optionality, legal equality and the initiative of the parties property and personal non-property relations with participation of citizens and the organizations, and also protection of their interests. |

Criteria of civil law as branches of law, are its subject and a regulation method.

**Subject of civil law** are **property** and **personal non-property relations.**

Let's consider them more detail.

Property relations always arise and exist in connection with a finding of property at the certain person, or in connection with transition of property from one person to another.

To the property relations regulated by civil law, concerning relations about occurrence, changes and the terminations of the rights of possession, using and the order of the property, constituting ownership.

The right possession is a legal possibility of actual possession a thing.

The right of use is a legal possibility to take from thing useful properties.

The right to manage is a legal possibility of the proprietor to define actual and legal destiny of the property.

The set of all three powers concludes content of property rights.

The right of ownership arises because of certain legal facts, which are called bases or ways of occurrence.

The property right arises in two various ways one of which is called as initial as it arises concerning property which had no proprietor or which proprietor is unknown. The second method is derived as it involves the transfer of property from one owner to another.

***The property right*** can belong to individual persons, collectives of proprietors and the state. The private, collective, communal and state ownership are pointed out.

Personal relations are characterized by the lack of economic substance, its subject is non-material values: name, honor, dignity, private life, the authorship of the works of science, literature, art, invention, improvement suggestions, etc., arise in relation to such non-material values ​​that are inseparable on the individual.

***Civil law regulates two groups of personal relations:***

The civil law regulates two groups of personal non-property relations:

- The relations arising concerning authorship to products of a science, the literature, art, the invention, efficiency proposals etc. (connected with property);

- The relations connected with protection of honor and dignity, business reputation, private life, etc. (not connected with property)

***The civil law method*** is a set of methods and ways of influence on participants of the relations entering into sphere of action of civil law.

Norms of civil law are optional/

***Characteristic features of this method are****:*

-Legal equality of the parties;

-The initiative of the parties at a legal relationship establishment;

-Possibility of a choice of a variant of the behavior which is not contradicting the current legislation.

**2. Subjects of civil relations**

***Civil legal relationship*** is based on norms of civil law legal communication between legally equal, material and organizational independent subjects who act as carriers of the subjective civil rights and duties. These participants of legal relationship are called as ***legal subjects.***

The legal status of persons is defined by concept of ***legal personality*** under which the volume of legal ability of persons is meant to be subjects of civil legal relationship. The concept of legal personality includes such concepts, as legal capacity and ability. In certain cases for concept of capacity separately allocate such components, as **contract ability** and **capacity to delict**.

As the civil law represents the branch of the right regulating property relations, of course, a legal status of subjects of civil law defines their ability to be participants of property relations, as arising on own will and in own interests, and which arise owing to a trespass.

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| **Legal capacity represents** ability of the subject to have the civil rights and duties, (in other words to be legal subjects). Item 25 Civil code of Ukraine. |

***Civil rights means*** not civil rights but property rights, because such rights belong not only to citizen but also to foreigners, and various organizations.

Thus, ability to have designates not actual possession, and theoretical possibility of such possession. As property rights are based, mainly, on ownership, we can say that the civil rights that enter into concept of legal capacity are the right to possession and the right to use.

In some western countries to our concept of legal capacity corresponds concept of passive ability (passive capacity) which explains character of this legal status. The civil obligations entering into concept of legal capacity can be only those which arise from the civil rights belonging to the subjects of civil rights.

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| **Capacity represents** ability of the subject by its actions to get the civil rights and to create for itself civil duties. (Item 30 Civil Code of Ukraine). |

Concept of capacity corresponds concept of active ability (**active capacity**) that specifies in possibility of active legally significant actions of the capable subjects.

The capable subject has the right not only to own or use, but also has right to manage the property. In case when the property relations connected with managing of property, which have to enter into an agreement or contract, we use the term ***contract ability.***

In addition, the obligations arising from capable entity can be not only those that arise from its rights, but also those that are a direct consequence of his actions, such as infringement of the law, called ***delicts.***

Accordingly, the capable person we call ***delictual.***

All subjects of civil law are divided into physical and legal persons (though it can be neither physical nor legal).

**2. The physical persons possessin**g the civil rights on territory of Ukraine, are citizens of Ukraine and the foreigners constantly living in Ukraine. Foreigners are divided into foreign citizens, persons without citizenship (stateless) and refugees, where legal personality differs in some way.

The legal capacity of physical persons in Ukraine is determined in a unified way for citizens and non-citizens of Ukraine. It occurs at the moment of birth and ends in the moment of death of a physical person.

**Partial civil** capacity of a physical person under 14 years of Art.31 of the Civil Code. Has right to do small domestic transactions, and personal non-property rights to intellectual and creative activity.

**Incomplete civil** capacity at the age from 14 till 18 years citizens of Ukraine means persons have the right to dispose of the earnings, the income the grant, to be the participant (founder) of legal bodies and also to realize the rights of intellectual property.

**The capability of the citizens** of Ukraine arises at achievement 18 years of age or at marriage before that age, or if the person is made over mother (father) of the child.

Legal capacity of foreign citizens is determined by the law of the country of which they are. This age is different in countries: 18 (UK), 19 years (Germany), 20 years (Switzerland), 21 (U.S.). However, a foreign citizen involved in civil matters on the territory of Ukraine, is considered to be capable from 18 years. The capability of stateless persons determined by laws of the country where they live permanently or, stateless persons living permanently in the territory of Ukraine are capable under Ukrainian law.

Capacity of refugees, i.e. the persons who are foreign citizens, but received in territory of Ukraine a refuge and the official status corresponding to it, are equated in the civil rights to citizens of Ukraine.

In the total concept of ability give possibility to be engaged in enterprise activity as the resident of Ukraine.

We can say that entrepreneurship is an entirely civil action in a professional manner. Foreign citizens and stateless persons get this right only after obtaining a residence permit, which is issued only in the case of matching their specific criteria.

***Individuals may be limited in their capacity by the court*** if the person has a mental disorder or abusing alcohol, drugs or toxic substances.

In this case, over them is set guardianship i.e. they are actually equated to persons with incomplete capacity.

Physical persons can be ***recognized incompetent by a court because*** of dementia or mental illness (persistent mental illness). Guardianship is established over incapacitated persons.

Special kind of legal incapacity of physical persons is the recognition ***of persons is unknown*** absent on a judgment. Such decision is accepted under the *statement of interested persons if in a permanent address of the person within a year there are no data on a place of its stay*. Guardianship is established over property of such person, i.e preservation of legal capacity, but his capacity is lost.

Physical persons can be deprived legal capacity, and, ***accordingly ability in case of a declaration about death of person by the court***.

Such decision can be accepted by the court under the statement of interested persons if in a permanent address of the person *within three years there are no data on a place of its stay*.

If physical person was gone under the circumstances threatening to his life or giving the grounds to assume his death from accident, preferential term – is six months.

In case the person was missing in a zone of military operations, the prolonged term – two years after the termination of military operations is established.

In case of declaring a person dead he is accepted as person that lost his legal personality, and all his property rights are transferred to the legal heirs.

Capacity of physical persons can be limited for the reasons connected with other circumstances.

In particular, the considerable number of civil servants is limited in capacity owing to a legislative interdiction for employment by enterprise activity.

Besides, some persons can be limited in capacity by judgment via interdiction for employment by certain activity as a consequence of selfish malfeasance.

Besides, some persons can be limited in capacity by judgment via interdiction for employment by certain activity owing to commit crime of officials.

**3. The legal body**.

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| ***Legal bodies are*** the organizations which possess the isolated property, can get on its own behalf the property and personal non-property rights and perform duties, to be claimants and respondents in court, arbitration or the arbitration court. (Item 23 Civil Code of Ukraine). |

**Signs of the legal body.**

*Organizational unity*. The legal body is a unit, capable to solve certain social problems, differs accurate internal structure and the way of creation.

The organizational unity is the first stage in creation of the legal person which is realized as follows: proprietors (proprietor) of the isolated property create individual certificates, such as the order, the articles of incorporation, the charter in which all are specified necessary formal (the name, the address, structure) and functional (an activity kind) signs of the legal person.

The content of the charter defines the scope of legal personality. The activity not compatible to the charter, is the basis for compulsory liquidation of the legal person;

*Property isolation*. The property of the legal person is always separated from property of its founders and participants that is the second stage of creation of the legal person. t is meant that founders of the legal person allocate in his property a certain part of its property, fixing this allocation documentary.

Such allocation has practical value as from this point founders do not bear financial responsibility for the obligations of a legal entity, and the entity is not liable for the obligations of the founders. Separate property is the basis of a legislative ban on presence as a part of the legal person of other legal bodies. If the legal body creates the divisions they act in the form of branches or the representations which are operating on the basis of the power of attorney and are not legal bodies

***Institutions are legal*** persons, mainly the state, carrying out certain administrative, educational, educational, medical and other functions.

***The organizations*** are the associations of citizens created for joint achievement of definite purposes in social, cultural, political or other spheres. Associations of citizens divided on political parties and public organizations. As it was told above, all legal bodies can make only such actions which correspond to their authorized purposes.

***The enterprises are*** the legal bodies created for the purpose to get the profit.

**Depending on a kind of proprietors of the property, creating legal bodies, the last can be divided on:**

- **State** in which basis the state ownership lies;

- **Municipal** which are created at the expense of association of the property physical and (or) legal bodies, including state and a municipal community;

**- Private**, belonging to one physical person.

Now the overwhelming majority of legal bodies is represented by the enterprises of various patterns of ownership among which especial variety the collective enterprises which can be divided into the cooperative societies based on the joint property of labor collective (artels and the agricultural enterprises differ) and the economic societies using involved workers among which are allocated:

Associations of capitals in which founders separate a part of the property for the purpose of its use to get the profit. In turn associations of capitals are divided on:

- *The joint-stock company,* which capital is completely separated from its investors, (shareholders) and can't be withdrawn by them.

-Joint-stock companies, depending on an openness of the reference of their actions, are divided into open and closed;

- *The limited liability companies* which capital is divided between founders (shareholders) into shares, each share can be claimed by any of its participants;

*Societies with the additional responsibility,* which differ from the previous of high responsibility of its founders in addition to authorized capital stock;

*Unification of the persons* whose founders do not unite their property, but they unite their activities.

***The following types of associations of people are:***

* Full society, participants (full companions) which unite for joint employment by enterprise activity without formal association of capitals;
* Limited partnership, which is composed of members with full responsibility (complementary) and participants with limited liability (limited partners). Due to the fact that the full and limited partnerships do not have separate property, they do not fully correspond the definition of a legal entity.

**4. Objects of civil law are all those vital values where can occur civil legal relationship, including claim requirements of their protection.**

Object of civil legal relationship is that make to arise and carrying out the civil rights and duties, all that that is a subject or result of activity of participants of a civil turn. Objects of the civil rights are things, including money and securities, other property, property rights, results of works, services, results of intellectual activity, information, and also other material and non-material benefits.

***Classification of objects of the civil rights:***

**1.By the defense capacity:**

- ***free*** in a civil turn are those objects, which can transform, be inherited, be alienated without any restrictions.

- ***limited*** in a civil turn - are objects for which is necessary any permission (the recipe, the license)for acquisition.

- ***withdrawn*** from a civil turn - objects which can't be object of the civil-law agreement (the earth of protected fund, historical and cultural and art values of nation-wide value).

**2. Movable and immovable property of the substance**:

***-to real estate*** (real estate, immovable property) belong the land lots, and also the objects located on the land lot moving of which is impossible without their depreciation and change of their appointment.

-***movable objects*** are things that you can move freely in space.

**3. Divisible and indivisible property.**

***-divisible*** is a thing that can be divided without losing its purpose.

***- Indivisible***, is a thing that cannot be divided

**4. Things defined by individual and patrimonial signs.**

***- The thing possesses*** certain individual signs if it is allocated only with it inherent signs which distinguish it from other homogeneous things, individualizing it. The things defined by individual signs, are irreplaceable.

***- The thing possesses*** certain patrimonial signs if it has the signs inherent in all things of the same sort, and is measured by number, weight, a measure. The thing which has only patrimonial signs is replaceable.

**5. Consumed and not consumed things.**

**- The thing which** owing to its disposable use is destroyed is consumer or stops to exist in an original form.

**- Inconsumable there** is a thing intended for numerous use which keeps the original form for a long time.

**LECTURE 2.**

**Topic: TRANSACTIONS AS MAIN TYPE OF CIVIL LEGAL RELATIONSHIP**

**1. Concept and types of transactions.**

**2. Conditions of validity of the transaction.**

**3. Void transactions.**

**4. Legal consequences of recognition of the transaction void.**

TRANSACTIONS are actions of individuals aimed at the establishment, modification or termination of civil rights and obligations.

Depending on various signs, transaction can be united in groups accessory to which has certain legal value.

**Classification of transactions:**

1. By the number of sides, committing the will they can be one-way (if for their commission enough will of one party, for example, drawing up a will, issue of the power of attorney), bilateral (when they occur requires concurrence of will on both sides, for example, the purchase and sale, barter) and multilateral (when expressed will of three or more parties, for example, a contract on joint activity). Bilateral and multilateral agreements are called transactions. Unilateral transactions typically need notarization.
2. Depending on corresponding an obligation of one party in the transaction to make a certain action counter equivalent obligation of other party on representation of material or other benefit, transactions divided on onerous (only two-way deals, for example, transfer of assets in a property, in temporary use), gratuitous (unilateral transactions always are gratuitous, for example, the donation transaction, the will).
3. By the moment when it is time to emergence of transaction, they divided on consensual (those for which it is enough the agreement between the parties, for example, the contract of sale, the commission agreement) and real (when it is not enough one agreement, is necessary also thing transfer, for example, the loan agreement, storages, transportations).
4. By volume of the transferred rights there can be transactions with transfer of the right of possession (the contract of storage, transportation), with transfer of a right of use (the property lease contract, the license contract), with transfer of the right of the order (the commission contract, the consignment contract), with property right transfer (the purchase and sale contract, the donation contract).
5. By the form of object the transaction can be with transfer of assets, with transfer of property rights, with transfer of rights on commission of actions.
6. With existence of additional circumstances transaction may concern to (termless) or conditional (unconditional).Conditional transactions can contain a resolutive or suspensive condition.

**2. To make the transaction valid, it must conform to the requirements of the law.** This means that the requirements of the law must meet all elements of the relationship, ie subjects, objects and content.

- The persons making the transaction should possess a necessary legal personality. Only capable citizens can make it. The persons possessing partial or limited capacity can make only those transactions which are permitted by the law. Legal entities can make any transactions which are not forbidden by the law and not contradicting the purposes, fixed in their charters.

- Objects of transactions should be allowed to a civil turn.

- The contents of the transaction should correspond to the law.

The content of the transaction includes actual and a formality aspects:

а) *The actual aspect* concerns commission of certain actions and demands of will unity and expression of subjects at their commission. There should not be contradictions between the will of the person and a form of expression of this will.

b) *The formal aspect* consists in the requirement of compliance to the law of the established form of the transaction. Transactions can be both verbally and in written form. The oral form is provided for such transactions which are executed by their commission, and also at transactions for the small sum.

In some cases, the law prescribes a written form, which can be a simple or a notary. The following transactions are subject to the notarial certificate: unilateral (the will, donation, an assignment), on transfer of the property right to real estate, about pledge, etc.

**3. The transaction made with violation of requirements of the law**, doesn't create legal consequences and is void. All types of void transactions are divided by the law into two groups. Insignificant transactions, i.e. transactions which are void under the law and nothing can restore their validity.

Insignificant transactions are:

- transactions with unusable subjects, i.e. the transactions of the legal entity contradicting his authorized purposes (Art. 50 Civil Code); the transactions made by incapacitated individuals, being those on age or by a court decision (Art. 51 Art., 52 Civil Code);

- transactions with unusable objects, i.e. with the objects forbidden in a civil turn, and also with the poor-quality goods;

- Transactions with the unusable contents, i.e. is made on purpose knowingly contrary interests of the state and society (Art. 49 Civil Code); imaginary and feigned transactions (Art. 58 Civil Code).

Transactions with the unusable contents, i.e. transactions that are made for the purpose knowingly contradicting interests of the state and society (Art. 49 Civil Code); imaginary and feigned transactions (Art. 58 Civil Code).

Fraudulent deal - is a deal made ​​only for the view, without the intention to create legal consequences (eg, donation to avoid confiscation by a court). The fictitious (sham) transaction- is a transaction which is concluded with a view to concealing another transaction (eg, purchase and sale of the house is covered by the donation contract, not to give the owner the right of first refusal).

The second group of void transactions is formed by debatable transactions, i.e. transactions on which the reality presumption extends, in other words, they are valid at commission and can be recognized void only by court with claim of interested party, and on interested party lies the burden of a of their invalidity.

Debatable transactions are:

- Transactions of subjects with limited capacity;

- Transactions made at will and its manifestation: а) citizen, not capable to understand value of the actions; b) owing to error; c) owing to deception, violence, threat;

- Transactions made with violation of the established written (notarial) form. Such transactions are admitted void only in case of the direct instruction on such consequence in the law. In other cases transaction are considered valid, but interested parties are deprived of possibility to prove the case in court by means of testimony.

**4. Depending on a type of the void transaction the consequence of void acceptance can consist in the following:**

Restitution always implies the return of property in kind, exactly the one that was involved in the transaction. Only if this is not possible, money's equivalent is returned;

- The return of the injured party by other party received in invalid transaction (unilateral restitution);

- Circulation of all received in transaction in state revenue (confiscation).

- For certain transactions law provides additional property consequences in the form of damages to the injured party.

The factor influencing on consequences of recognition of the transaction void, is the guilt of the parties (party) connected with existence of intention on commission of illegal actions. In case the parties honestly were mistaken concerning legitimacy of the actions, such consequence as confiscation, as a rule, isn't applied.

**LECTURE 3.**

**TOPIC: CIVIL-LAW CONTRACT.**

**1. Concept, value and contract functions in civil law;**

**2. System of civil-law contracts;**

**3. Conclusion, change and contract cancellation;**

1. The civil-law contract is the most important norm of private law. The public legislation establishes only the general limits of requirements which it is necessary to adhere (legal regime), providing the solution of all main questions to subjects of private law (persons). Persons will coordinate their common will during drawing up the contract therefore the contract is considered to be concluded when the parties came to the agreement on all important issues included in the contract.

The structure of the private contract is similar to structure of rule of law because the private contract is the same rule of law, as well as that is contained in the law or in other normative legal act. The difference between them consists that validity of contract as rules of law, extends only on the contractual parties. Private contracts belonging to the system of law is proved by the fact that, when there is violation of its provisions, the state uses the obligatory force against the party which has broken the conditions of the contract. Therefore, the general structure of the contract contains an indication of subjects of the contract, the object of the contract and legal content, having such elements that are similar to the hypothesis, dispositions and sanctions.

**2**. **Depending on distribution** of the rights and obligations of the parties contracts divided on: 1) **Unilateral** - one party assumes a duty before other party to make certain actions or to keep from them, and other party is allocated only with the right of the requirement, without emergence of a counter duty concerning to the first party; 2) **Bilateral** - the rights and duties arise at both parties of the contract.

Depending on existence of counter representation: **1) the onerous** – in which instead of the transferred thing, rendered service, the performed work other party, pays money or carries out other property representation: а) **Exchange** – in which representation of one party is answered by a counter equivalent rendered by another party; b) **Risk (aleatorny)** – where in the moment of their commission it is unknown what, will be more valuable: representation of one party or counter representation; **2) the gratuitous** – in which one party transfers to another a thing, renders service, performs work without receiving counter representation from other party.

**Depending on the moment from which the contract is considered to be concluded:** 1) the real – are considered to be concluded from the moment of thing transfer under condition of parties' agreement by all important conditions. Depending on the moment from which the contract is considered to be concluded: 1) the real – are considered to be concluded from the moment of thing transfer under condition of parties' agreement by all important conditions; 2) consensual - are considered to be concluded from the moment of of parties' agreemen by all important conditions.

**On extent of the termination:** 1) the previous – the arrangement about conclusion the contract in the future; 2) the main – directly generates the rights and duties; the additional - supplements the main contract.

**Depending on persons which take part:** 1) with the assistance of contractors – the debtor carries out in favor of the creditor; 2) with the participation of third parties - performance under the contract is mediated by the participation of a third party that is not a party to the contract.

3. The conclusion of the contract it is an achievement by the parties in due form a consent from all important contract provisions, and in the cases provided by the law, also implementation of transfer of assets or implementation of a certain action.

**Stages of the contract:**

1). **The offer** - the offer to sign the contract, which: а) addressed to a certain person (certain persons); b) contains instructions about important contract conditions; c) expresses firm intention of the person which made the proposition, to consider itself obliged in case of its acceptance. The person, which made the offer, is called as an offerer.

The offer can be withdrawn by the time of or at the moment of receiving by her addressee. If the addressee received the offer, it can't be withdrawn throughout the term for the answer. The exception - if in the offer specified possibility of its response, it follows from its essence or circumstances (situation) under which it was made.

2). **Acceptance** - is consent of the person to whom an offer is addressed about its acception. A person who has made the acceptance, called the acceptor.

CHANGE of the CONTRACT means that obligations of the parties continue to be valid, but according to the changed conditions concerning a subject, a place, performance terms, etc.

Annulment of the CONTRACT leads to the cessation of the parties' obligations under earlier agreements concluded between them.

Reasons: 1) Consent of the parties can cause changes or cancellation of the contract, unless otherwise provided by contract or by law, 2) unilateral refusal from contract in whole or in part, can only be achieved if the right to such refusal is directly provided by law or contract 3) The court's decision may cause a change or cancellation of the contract by the request of the parties in case of essential violation by the other party, and in some cases established by contract or by law.

Obligations change or stop from the moment of achievement of consent about change or contract cancellation if another isn't established by the contract or it is not caused by nature of its change. If the contract is changed or terminated by the courts, obligations changed or terminated upon the entry into force of the court to amend or terminate the contract.

Legal consequences: obligations of the parties change according to the changed conditions concerning a subject, a place, performance terms, etc.; obligations of the parties are stopped; the parties have no right to demand returning of something that was executed by them according to obligations by the time of change or contract cancellation if another isn't established by the contract or the law if the contract is changed or canceled in connection with important violation of the contract by one of the parties, other party can demand the indemnification, caused by change or contract cancellation.

**LECTURE 4.**

**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) *multilateralagreements* (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) *freelyregulated* - are concluded on the basis of the economic intentions of the parties legally drawn up by the terms of the contractsв.

**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, *itsmain 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 sanction*s 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.