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In this study guide there is the presentation Civil law. Civil law generally involves interaction between individuals or groups regarding the conduct of human affairs that are not punished by the government. Matters that involve disputes between private parties such as negligence, defamation, nuisance, breach of contract, real property titles, or that involve life planning such as preparing the disposition of property upon death, organizing a corporation or limited liability company, or probating the estate of a deceased loved one, all fall within the civil areas of law.

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SECTION 1

GENERAL CHARACTERISTICS OF CIVIL LAW

Chapter 1. What is Civil Law

Civil law, civilian law, or Roman law is a legal system originating in Europe, intellectualized within the framework of late Roman law, and whose most prevalent feature is that its core principles are codified into a referable system, which serves as the primary source of law. This can be contrasted with common law systems whose intellectual framework comes from judge-made decisional law, which gives precedential authority to prior court decisions on the principle that it is unfair to treat similar facts differently on different occasions.

Civil law generally involves interaction between individuals or groups regarding the conduct of human affairs that are not punished by the government. Matters that involve disputes between private parties such as negligence, defamation, nuisance, breach of contract, real property titles, or that involve life planning such as preparing the disposition of property upon death, organizing a corporation or limited liability company, or probating the estate of a deceased loved one, all fall within the civil areas of law.

Historically, a civil law is the group of legal ideas and systems ultimately derived from the Code of Justinian, but heavily overlaid by Napoleonic, Germanic, canonical, feudal, and local practices, as well as doctrinal strains such as natural law, codification, and legal positivism.

Civil law was also adopted in the nineteenth and twentieth centuries by countries formerly possessing distinctive legal traditions, such as Russia and Japan, that sought to reform their legal systems in order to gain economic and political power comparable to that of Western European nation-states.

Conceptually, civil law proceeds from abstractions, formulates general principles, and distinguishes substantive rules from procedural rules. It holds case law to be secondary and subordinate to statutory law. When discussing civil law, one should keep in mind the conceptual difference between a statute and a caudal article. The marked feature of civilian systems is that they use codes with brief texts that tend to avoid factually specific scenarios. Code articles deal in generalities and thus stand at odds with statutory schemes which are often very long and very detailed.

Territories following a civil law system are typically those that were former French, Dutch, German, Spanish or Portuguese colonies or protectorates, including much of Central and South America. Most of the Central and Eastern European and East Asian countries also follow a civil law structure. Countries with civil law systems have comprehensive, continuously updated legal codes that specify all matters capable of being brought before a court, the applicable procedure, and the appropriate punishment for each offense. Such codes distinguish between different categories of law: substantive law establishes which acts are subject to criminal or civil prosecution, procedural law establishes how to determine whether a particular action constitutes a criminal act, and penal law establishes the appropriate penalty. In a civil law system, the judge's role is to establish the facts of the case and to apply the provisions of the applicable code. Though the judge often brings the formal charges, investigates the matter, and decides on the case, he or she works within a framework established by a comprehensive, codified set of laws. The judge's decision is consequently less crucial in shaping civil law than the decisions of legislators and legal scholars who draft and interpret the codes.

The civil law tradition makes a sharp distinction between private and public law. Private law includes the rules governing civil and commercial relationships such as marriage, divorce, and contractual agreements. Public law consists of matters that concern the government: constitutional law, criminal law, and administrative law. In many countries with civil law systems exist two sets of courts: those that hear public law cases and those that address matters of private law.

The role of judges in civil law jurisdictions differs considerably from that of judges in common law systems. When different facts or new considerations arise, common law judges are free to depart from precedent and establish new law. The civil law tradition views judges as government officials who perform essential but uncreative functions. Civil law judges administer the codes that are written by legal scholars and enacted by legislators. They may also consult legal treatises on the issue in question. The civil law system assumes that there is only one correct solution to a specific legal problem. Therefore, judges are not expected to use judicial discretion or to apply their own interpretation to a case.

Civil law systems do not have any process like the common law practice of discovery – the pretrial search for information conducted by the parties is involved in the case. The trial of a case under civil law also differs substantially from a common law trial, in which both parties present arguments and witnesses in open court. In civil law systems the judge supervises the collection of evidence and usually examines witnesses in private. Cross-examination of witnesses by the opposing party's attorney is rare. Instead, a civil law action consists of a series of meetings, hearings, and letters through which testimony is taken, evidence is gathered, and judgment is rendered. This eliminates the need for a trial and, therefore, for a jury.

Systems of common law and civil law also differ in that how law is created and how it can be changed. Common law is derived from custom and precedents (binding judgments made by prior judicial decisions). In the common law system, the precedent itself is the law. Therefore, the judges who decide which party will prevail in any given trial are also the creators of common law. Civil law, on the other hand, is made by legislators who strive to supplement and modernize the codes, usually with the advice of legal scholars. Civil law judges administer the law, but they do not create it.

Chapter 2. Features of a Civil Law System

1. There is generally a written constitution based on specific codes (e. g., civil code, codes covering corporate law, administrative law, tax law and constitutional law) enshrining basic rights and duties; administrative law is however usually less codified and administrative court judges tend to behave more like common law judges.

2. Only legislative enactments are considered binding for all. There is little scope for judge-made law in civil, criminal and commercial courts, although in practice judges tend to follow previous judicial decisions; constitutional and administrative courts can nullify laws and regulations and their decisions in such cases are binding for all.

3. In some civil law systems, e. g., Germany, writings of legal scholars have significant influence on the courts.

4. Courts specific to the underlying codes are therefore usually separate constitutional court, administrative court and civil court systems that opine on consistency of legislation and administrative acts and interpret that specific code.

5. Less freedom of contract means that many provisions are implied into a contract by law, and parties cannot contract out of certain provisions.

Chapter 3. Branches of Civil Law

Contract law deals with agreements between two or more parties, each of which is obligated to hold up their portion of the agreement.

Tort law is a branch of civil law that is concerned with personal injury and civil wrongdoing. A tort is a civil wrong done by one person or entity to another which results in injury or property damage, and frequently involves monetary compensation to the injured party.

Property law covers both personal property and real property. Personal property can be tangible, such as jewelry, animals, and merchandise, or intangible such as patents, copyrights, stocks, and bonds. Real property refers to land and anything built on it that cannot be easily removed, as well as anything under the surface of the land, such as oil and minerals.

Family law is the branch of civil law that deals with marriage, divorce, annulment, child custody, adoption, birth, child support, and any other issues affecting families. This branch of civil law is unique in that its object is not necessarily a person who committed a civil wrong.

Chapter 4. Principles of Civil Law

The principles of Civil Law are as follows:

– inadmissibility of arbitrary interference in the private sphere of life;
– inadmissibility of deprivation of property rights, except in cases established by the Constitution of Ukraine and the law;
– freedom of contract;
– freedom of entrepreneurship;
– judicial protection of civil rights and interests;
– fairness, reasonableness and good faith;
– legal equality of subjects.

Functions of Civil Law:

– regulatory function;
– security;
– preventive and educational;
– preventive-stimulatory.

Regulatory function provides civil law regulation of trade and monetary, moral and property relations.

Security function provides protection of rights of civil law.

Preventive and educational functions are closely linked to security and achieved through the institution of civil liability.

Preventive-stimulatory function is to encourage various civil-legal means necessary to society and state behaviour of citizens and organizations.

Major part of the norms on the main provisions of civil law includes the grounds of civil rights and obligations, the implementation and protection of civil rights, subjects and objects of civil rights, transactions, representation and power of attorney, statute of limitations, legal institution of moral rights, property law, intellectual property law, contractual right (of the total) and inheritance law.

The special part consists of certain types of liabilities, contractual obligations, commitments from unilateral actions, non-contractual obligations (torts and liabilities of the acquisition, maintenance of property without sufficient legal grounds).

The main part consists of norms about the main positions of civil law, the grounds of civil rights and obligations, the implementation and protection of civil rights, subjects and objects of civil rights, transactions, representation and power of attorney, terms and deadlines, statute of limitations, legal institution of moral rights, property law, intellectual property law, contractual right, and inheritance law.

Chapter 5. Civil Legislation of Ukraine

Article 1. Relations Regulated by the Civil Legislation

1. Civil legislation shall regulate personal property and non-property relations (civil relations) founded on the basis of legal equality, goodwill and property independence of their parties.

2. The civil legislation shall be not applied to the property relations founded on the administrative or other power subordination of one party to another as well as to tax and budgetary relations unless otherwise established by the law.

Article 2. Participants of Civil Relations

1. Natural persons and legal entities represent participants of civil relations (hereinafter – the "persons").

2. Participants of civil relations shall include the state of Ukraine, the Autonomous Republic of Crimea, territorial communities, foreign states and other subjects of the Public Law.

Article 3. General Foundations of Civil Legislation

1. General foundations of the civil legislation include:

1) unacceptability of a self-willed intrusion into a private life of a human;

2) unacceptability of ownership deprivation except as established by the Constitution of Ukraine and the law;

3) freedom of agreement;

4) freedom of entrepreneurial activity;

5) remedy of a civil right and interest;

6) equity, good faith and reasonability.

Article 4. Acts of Civil Legislation of Ukraine

1. The Constitution of Ukraine shall constitute the framework of the civil legislation of Ukraine.

2. The Civil Code of Ukraine is the basic act of the civil legislation of Ukraine. The other laws approved according to the Constitution of Ukraine and this Code shall also represent the acts of the civil legislation (hereinafter – the "law").

If a legislative initiative subject presents to the Verkhovna Rada of Ukraine a draft law, which regulates civil relations otherwise than provided by this Code, he/she/it shall be obliged to present concurrently the draft law on the introduction of modifications to the Civil Code of Ukraine.

3. Civil relations may be regulated by the Acts of the President of Ukraine as established by the Constitution of Ukraine.

4. The Decrees of the Cabinet of Ministers of Ukraine shall be also referred to the civil legislation acts. If the Decree of the Cabinet of Ministers of Ukraine contradicts provisions of this Code or the other law, the respective provisions of this Code or the other law shall be applied.

5. Other state power authorities of Ukraine and the Autonomous Republic of Crimea may adopt normative-legal acts that regulate civil relations only in the events and to the extent established by the Constitution of Ukraine and the law.

6. Civil relations shall be regulated alike all over the territory of Ukraine.

Article 5. Operation of Civil Legislation Acts Throughout the Time

1. Civil legislation acts shall regulate relations that have appeared since their effective date.

2. Civil legislation acts shall have no retroactive effect in course of time except as it mitigates or cancels the Person's responsibility.

3. In the event that civil relations occurred earlier and were regulated by the civil legislation act, which lost its effect, the new civil legislation act shall be applied to the rights and obligations that occurred beginning from its effective date.

Article 6. Civil Legislation Acts and the Agreement

1. The parties shall be entitled to enter into agreement not provided by the civil legislation acts but complying with the general foundations of the civil legislation.

2. The parties shall be entitled to regulate their relations not regulated by the civil legislation acts in the agreement provided thereby.

3. In this agreement, the parties may deviate from the provisions of civil legislation acts and regulate their relations at their own discretion. The parties may not deviate from the provisions of civil legislation acts in this agreement unless expressly specified in these acts as well as in the event that mandatory nature of the provisions of the civil legislation acts results from their subject matter or the substance of relations between the parties.

4. Provisions of parts 1, 2 and 3 of this Article shall be applied to the unilateral legal actions.

Article 7. Practice

1. Civil relations may be regulated by the practice, in particular, the business-dealing practice. Practice is rules of conduct not established by civil legislation acts but applied to a certain sphere of civil relations. Practice may be specified in the appropriate document.

2. The practice contradicting the agreement or civil legislative acts shall not be applied to the civil relations.

Article 8. Analogy

1. If civil relations are not regulated by this Code, any other civil legislative acts or the agreement, they shall be regulated by those legal norms hereof and the other civil legislative acts, which regulate civil relations similar in substance (law analogy).

2. In case of failing to use the law analogy for the regulation of civil relations, they shall be regulated according to the general foundations of the civil legislation (law analogy).

Article 9. Application of the Civil Code of Ukraine to Regulation of Relations in the Area of Business, Natural Resources Use, Environmental Protection, Labor and Family Relations

1. Provisions of this Code shall be applied to the regulation of relations occurring in the sphere of natural resources use and environmental protection as well as to labour and family relations if they are not regulated by any other legislative acts.

2. The law may provide the features of property relations in the economic sphere.

Article 10. International Agreements

1. The effective international agreement that regulates civil relations and is approved as amendatory one by the Verkhovna Rada of Ukraine shall be a part of the national civil legislation of Ukraine.

2. If the effective international agreement of Ukraine entered into according to the procedure specified by the law includes the rules other than those established by the appropriate civil legislation act, the rules of the appropriate international agreement of Ukraine shall be applied.

SECTION 2

PERSONAL NON-PROPERTY RIGHTS OF A NATURAL PERSON

Chapter 1. Historic Basis for Conception Development of Personal Non-property Rights of a Natural Person

Considering the so-called "problem of non-property interests", famous civilists of the early twentieth century argued that personal growth starts with external and material. The first spheres, in which subjective rights of a person were vindicated, were the spheres in relations of family and property. Later, gradually, the individual starts to appreciate non-property, spiritual benefits, and then begins to protect them first partially, weakly and unsystematically and then more fully.

Meanwhile, the issue of human rights always has been an integral part of a mankind development, acquiring specific to different epochs philosophical, religious or ethical elements. Therefore, noting the undeniable novelty and originality, a globality of modern research in the sphere of human rights, we should not forget about the contribution made by outstanding scientists and nationalists of past epochs concerning the human place and role in society, concepts of freedom, honour and dignity. Thus, in the late XIX − early XX centuries civil law extended its impact not only on the sphere of property relations, but also on the non-property, spiritual benefits, the conditions of which was the appearance of the first laws on copyright, which established the responsibility for the violation of personal interests, non-pecuniary damage; the mechanisms for the protection of non-property rights appeared, thus, the process of their real providing began.

The personal non-property rights of a person concept has reached its biggest development in the second half of the twentieth century. The problem of human rights has become important on the international level and it was reflected in many international legal documents such as the The Universal Declaration of Human Rights (December 10, 1948), International Covenant on Economic, Social and

Cultural Rights (December 16, 1966), International Covenant on Civil and Political Rights and the Optional Protocols thereto (December 16, 1966), European Convention for the Protection of Human Rights and Fundamental Freedoms (November 4, 1950), and others.

A new content of a private law reflected in modern codifications. A positive example is the Quebec Civil Code, enforced in 1994. There are 2 Chapters (142 particles) of the First Book ("People"), which are entirely dedicated to regulation of individual rights.

Chapter 2. Personal Non-property Rights of a Natural Person in Ukraine

Turning to our national history of civil law, the first attempts to regulate personal non-property relations were made in the 1960s of the twentieth century, and they were limited mainly to providing the protection of honour, dignity and business reputation. The so-called positive regulation of these relations was not carried out, or was out of the civil legal matter, although its content concerned the very civil law.

The desire to create a democratic society, the need for universal provision of human rights and liberties found its expression in Declaration of State Sovereignty of Ukraine in 1990. In turn, the 1990s of the twentieth century became an extremely favourable period for the Ukrainian civil law, for a sublime lawmaking. Confirmation of this was the development by the leading Ukrainian scientists of a new Civil Code of Ukraine, and the Second Book which was devoted to the personal non-property rights of a natural person that became a victory of a longstanding striving of the mankind for the implementation in right concepts of morality, justice, the idea of inherent worth of each individual.

It is extremely important, that a significant place in the Constitution of Ukraine of 1996 was dedicated to human rights and liberties in which a large number of articles (30 %) are of Chapter II, "Rights, Liberties and Duties of Human and

Citizen". This accelerated the development of the field of personal non-property relations in the civil-legal regulation. In the Constitution it changed the very understanding of human rights received by him or her from the government on the human rights concept, which are connected with the fact of its existence, so are related to its main properties, without which this person cannot be a "member of the public unity". With the absence of rights a nature of human individuality is destroyed. Thus, today, a person is an equal and free partner of the state, and the second one has not only the rights but also responsibilities concerning human.

In 2003, firstly in Ukraine, at the level of the Civil Code, personal non-property rights of a natural person, their content, guarantees and methods of protection were determined, which became a significant contribution to the process of improving the current civil legislation, bringing it into line with international standards.

Proclamation in the Article 3 of the Constitution of Ukraine of a human's life, health, honour and dignity, untouchability and security as the highest social value has led to the formation in the Civil Code of Ukraine of a separate Book dedicated to the personal non-property rights of a natural person. The constitutional rights of a person have a civil measure being civil rights of a natural person. If the Constitution guarantees the right for information, then in a civil measure it is an absolute non-property right of a person that exists within civil relations between this person and all third parties, including the state which has civil ways of protection.

In the Second Book of the Civil Code of Ukraine it is told about the rules that govern moral and property relations based on equality, inadmissibility of interference in the sphere of private life of the individual; judicial protection of violating any civil rights; justice, honesty, reasonableness, etc. A characteristic feature of the Civil Code of Ukraine is the fact that it emphasizes the importance of individual in society − both physical and legal. This idea permeates all institutions that are part of it, finding a reflection in the structure of the Code, which codifies the rules of private law, embodying legal order, based on the principle of human freedom.

Thus, the Civil Code of Ukraine firstly at the level of codification of civil law is dedicated to the regulation of personal non-property relations and is not a separate article, but a separate book, because non-property rights are the spiritual foundation of society, which is a precondition for other rights and liberties. This should be treated as a natural consequence of human rights development and humanitarian law. Limbs of the Book Two of the Civil Code of Ukraine, thus, furthering the humanization of human relations, understanding of human's role as the largest value in society, increase the level of relations between people of Ukraine to a level of European standards of human rights.

Chapter 3. Types of Personal Non-property Rights of a Natural Person

Considering the types of personal non-property rights fixed in a civil legislation, it should be noted, that the Civil Code of Ukraine divides the personal non-property rights of a natural person due to the focus or purpose into two groups: those which provide natural existence of a natural person (Chapter 21), and those ones which provide its social being (Chapter 22).

The doctrine of civil legislation offers several classification criteria of personal non-property rights. Thus, different types of personal non-property rights can be assembled into three legal institutions: rights for non-property benefits embodied in person; the right for personal security, freedom; the right for life and health protection; the right for untouchability of privacy.

According to the purpose, personal non-property rights can be classified into: personal non-property rights aimed at the individualization of a person: the right for a name, the right for dignity, reputation, etc.; personal non-property rights aimed at providing the physical untouchability of a person (life, liberty, choice of emplacement, location, etc.); personal non-property rights, aimed at untouchability of the inner world of a person and his/her interests (personal and family secrets, non-interference in private life, honor and dignity).

Firstly, there are two types of personal non-property rights: a) universal (general) personal non-property rights (which tend to be fundamental ones and belong to all natural persons without exception); b) some (special) personal non-property rights (which have only certain persons because of their commitment of a certain behavior, endowing them with some special legal status (legal modus), or under other circumstances, which are specifically provided by the law).

This first type of universal personal non-property rights contains two groups. The first group − universal (general) personal non-property rights, providing physiologic (natural) existence of a natural person. It consists of: a) the right which provides the natural (biopsychic) integrity of a person; b) rights which provide the reproducibility of a person; c) rights which provide natural detachment of a person.

In turn, the second group − universal (general) personal non-property rights, providing a social being of a person, is divided into the following kinds: a) rights providing an individualization of a natural person in society; b) rights which provide the social status of a natural person; c) rights which provide the freedom of social being;

d) rights providing personal awareness of a natural person; e) rights which provide the privacy of a natural person. Each of these kinds of personal non-property rights of a natural person is subdivided into additional groups.

The second type of personal non-property rights of a natural person is divided into such groups: a) special (individual) personal non-property rights of a natural person in the intellectual activity sphere; b) special (individual) personal non-property rights of a natural person in marital relations sphere; c) special (individual) personal non-property rights of a natural person in the field of medical matters; d) special (individual) personal non-property rights of children and other natural persons who have lack dispositive legal capacity; e) post tentative personal non-property rights of a natural person. Each group has an additional internal generic and species differentiation.

SECTION 3

TRANSACTION. REPRESENTATION. LIMITATION OF ACTION

Chapter 1. Transactions

General requirements necessary for validation of a transaction:

1. Content of a transaction cannot contradict this Code, other acts of civil legislation and moral principles of the society.

2. A person that effects a transaction shall have a required scope of civil capacity.

3. Expression of the will of a participant to a transaction shall have to be free and shall correspond to his/her inner volition.

4. A transaction shall be effected in the form established by the law.

5. A transaction shall be aimed at realistic occurrence of legal consequences stipulated by it.

6. A transaction effected by parents (adoptive parents) cannot contradict the rights and interests of their infants, minors or disabled children.

Transactions can be concluded in the verbal form in case they are fully performed by the parties at the moment of their conclusion, except for transactions subject to notarization and/or state registration, or those for which non-observance of a written form entails their invalidity. A legal person who got paid for goods and services based on a verbal transaction with another party shall be issued with a document which certifies the grounds for payment and the amount of the funds received.

Transactions for performing a contract concluded in writing by the parties' agreement may be concluded in verbal form unless this contradicts the contract or the law.

A transaction shall be considered concluded in writing in case if its substance is fixed in several documents, letters, or telegrams exchanged by the parties. A transaction shall be considered concluded in writing in case if the will of the parties is expressed by teletype, electronic or any other technical communication facilities. A transaction shall be considered concluded in writing in case if it is signed by the party (parties).

A transaction concluded by a legal person shall be signed by persons authorized there according to the founding documents, a proxy, the law or other civil legislation acts and stamped with a seal. When making of transactions, the use of a facsimile reproduction of a signature by means of mechanical or any other copying, electronic and digital signature or any other analog of a personal signature shall be admissible in cases established by the law, other acts of civil legislation or by a written consent of the parties containing specimens of the appropriate analog of the personal signature. If a physical entity cannot personally sign the transaction because of illness or physical disability, the text of the transaction shall be signed on his/her request and in his/her presence by another person. Notarization of transaction:

1. A transaction concluded in written form shall be subject to notarization only in cases established by the law or by agreement of the parties.

2. A transaction shall be witnessed by a notary or by other official who pursuant to the law is authorized for such notary action by effecting it on the document where the text of a transaction is set forth.

3. Only the text of a transaction that meets the general requirements established in the Article 203 of this Code can be notarized.

4. On the request of a natural or a legal person, any transaction with their participation can be notarized.

A transaction shall be subject to state registration only in cases established by the law. Such transaction shall be considered concluded since the moment of its state registration. The list of bodies that perform state registration, the procedure for

registration and the keeping appropriate registers shall be established by the law. Renunciation of transaction:

1. A person that concluded a unilateral transaction shall have the right to renounce it unless otherwise established by the law. If such renunciation of a transaction violates the rights of another person, these rights shall be subject to protection.

2. Persons that concluded a bilateral or multilateral transaction shall have the right by mutual agreement of the parties as well as in cases provided by the law to renounce it even if its terms and conditions have been completely fulfilled by them.

3. A transaction shall be renounced in the same form in which it was concluded.

4. Legal consequences of renunciation of a transaction shall be determined by the law or by agreement of the parties.

Chapter 2. Legal Consequences of Non-observance of the Law by the Parties. Requirements at Conclusion of a Transaction

A transaction shall be invalid if its invalidity is established by the law (void transaction). In this case, invalidation of the transaction by the court shall not be required. In cases established by this Code a void transaction may be found valid by the court. Where the invalidity of a transaction is not directly established by the law, but one of the parties or any other concerned person denies its validity on the grounds established by the law, such transaction may be invalidated by the court (voidable transaction).

In case of non-observation of the law requirement on notarization of a unilateral transaction, such transaction shall be void. A court may find such transaction valid if it establishes the conformity to the true intention of a person who concluded it, and notarization of the transaction was hindered by a circumstance, which was beyond the control of that person.

In case of failure to fulfill the requirement of the law as to notarization of a contract, such contract shall be void. If the parties agreed on all essential conditions of the contract, as proved by documentary evidence, and the contract was fulfilled completely or partially, but one of the parties evaded its notarization, the court may find such contract to be valid.

A transaction shall be considered approved, where these persons, having learned about its conclusion, do not file any claim against the other party within a month. In case of absence of such approval, the transaction shall be void.

A transaction concluded by a minor beyond the limits of his/her civil capacity without consent of his/her parents (adoptive parents) or a tutor, may be subsequently approved by them per the procedure established by the Article 221 of the Civil Code of Ukraine. A transaction concluded by a minor beyond the limits of his/her civil capacity without consent of his/her parents (adoptive parents) or tutors may be invalidated by a court upon a claim of a concerned person. If both parties to an invalid transaction are minors, each of them shall be obliged to return to the other party everything that he/she has acquired under the transaction in kind. If it is impossible to return the acquired objects in kind, their value shall be compensated at the prices existing at the moment of reimbursement.

A transaction concluded by a legal entity without an appropriate authorization (license) may be invalidated by a court. If a legal entity misled the other party as regards to its right to conclude such a transaction, it shall be required to compensate that party for the moral damage caused by such transaction.

If a person that concluded transaction made a mistake with regard to circumstances of significant importance, such transaction may be invalidated by the court. Mistakes as to the nature of transaction, rights and obligations of the parties, and such properties and characteristics of the object that considerably reduce its value or the possibility of its targeted use shall be of significant importance. A mistake as to the motivations of transaction shall not be of significant importance, except for the cases established by the law.

If one of the parties to transaction purposely deceived the other party with regard to the circumstances that are of significant importance such transaction shall be invalidated by a court. A deceit takes place both in case when a party denies existence of circumstances that might hinder from transaction conclusion, and in case when it withholds their existence. A party that used deceit shall be obliged to compensate the other party for the double losses and for the moral damage caused in connection with the transaction conclusion.

Transaction concluded by a person against his/her true will applying physical or psychic pressure to him/her by the other party or by another person, shall be invalidated by the court. A guilty party (another person) that applied physical or psychic pressure to the other party shall be obliged to compensate him/her for the double losses and for the moral damages caused in connection with the transaction conclusion.

A transaction concluded through malevolent agreement of a representative of one party with the other party shall be invalidated by the court. A principal shall have the right to demand from his/her representative and the other party joint compensation for the losses and the moral damage caused to him/her by transaction conclusion through malevolent agreement between them.

A transaction concluded by a person under the influence of a circumstance difficult for him/her and on extremely disadvantageous conditions may be invalidated by the court, regardless the initiator of such transaction.

A sham transaction shall be the transaction effected without intention to establish the legal consequences stipulated by this transaction.

A deceptive transaction shall be the transaction concluded by the parties to conceal another transaction that they actually concluded. In case of establishing the fact that the transaction was concluded by the parties to conceal another transaction that they actually concluded, the relations of the parties shall be regulated by the rules regarding the transaction that the parties have actually concluded.

Chapter 3. The Notion and Grounds for Representation

A representative may be authorized to conclude only those transactions that the person whom he/she represents has the right to conclude. A representative may not conclude a transaction which according to its contents, may be concluded only personally by that person whom he/she represents. A representative cannot conclude a transaction on behalf of the person whom he/she represents for the sake of himself/herself, or of another person whom he/she represents simultaneously, except for commercial representation, or regarding any other persons established by the law.

A transaction concluded by a representative shall establish, change or terminate civil rights and obligations of a person whom he/she represents.

A representative shall be obliged to personally conclude a transaction under the authority granted to him/her. He/she can transfer his/her authority in full scope or in part to another person if it was established by the agreement or the law between a person that is represented and a representative, or in case the representative was forced to do it aiming to protect the interests of a person whom he/she represents. A representative who transferred his/her authority to another person shall inform thereof a person whom he/she represents and provide that person with all necessary information about a person to whom the authority was transferred. Failure to fulfill this requirement shall impose on a person, who transferred the authority, responsibility for the actions of the substitute like for his/her own. A transaction concluded by a substitute shall establish, change, or terminate civil rights and obligations of a person whom he/she represents.

A transaction concluded by a representative with exceeding of authority shall establish, change, terminate civil rights and obligations of a person whom he/she represents only in case of subsequent approval of a transaction by that person. A transaction shall be considered approved, in particular, in case if the person who is represented has committed actions bearing witness to the transaction's acceptance for execution. Subsequent approval of a transaction by a person who is represented shall

establish, change and terminate civil rights and obligations since the moment of its conclusion.

Parents (adoptive parents) shall be legitimate representatives of their infants and minors. A guardian shall be a legitimate representative of an infant and a natural person declared incapable. In cases established by the law, other persons may be legitimate representatives.

A commercial representative shall be a person who permanently and independently represents entrepreneurs at conclusion of contracts in the sphere of businesses. Simultaneous commercial representation of several parties to a transaction shall be allowed with the consent of these parties and in other cases provided by the law. Authority of a commercial representative may be confirmed by a written agreement between him/her and a person who is represented, or by a proxy. Specifics of commercial representation in particular fields of businesses shall be established by the law.

Chapter 4. Representation by Proxy

Representation by proxy may be based on the act of a legal person. A proxy shall be a written document issued by one person to another for representation to the third parties. A proxy for concluding a transaction by a representative may be granted by a person who is represented (by a trustee) directly to a third person.

A proxy shall correspond to the form in which a transaction is to be concluded pursuant to the law.

A proxy on behalf of a legal person shall be issued by its body or any other person authorized to do this by founding documents and shall be sealed with a seal of that legal person.

The term of a proxy shall be established in the proxy. If the term of a proxy is not indicated, it shall remain effective till its termination. The term of a proxy issued

per procedure of reassignment may not exceed the term of the main proxy on the basis of which it was issued. A proxy without indication of the date of its execution shall be void.

Representation by proxy shall terminate in case of:

- expiration of the term of proxy;
- revocation of a proxy by a person that issued it;
- refusal of a representative to perform actions established by a proxy;
- termination of a legal person that issued a proxy;
- termination of a legal person to whom a proxy was issued;
- death of a person who issued a proxy, declaring him deceased, acknowledging him incapable or missing, restriction of his capacity;
- death of the person to whom the proxy was issued, declaring him/her to be deceased, acknowledging him/her to be incapable or missing, and restricting his or her capacity.

A person who issued a proxy and later revoked it must immediately inform thereof the representative and third parties, known to him/her, for whose representation a proxy was issued. Rights and obligations in respect of the third parties arising as a result of a transaction conclusion by a representative before he/she learned or could learn about revocation of a proxy shall remain effective for a person who issued a proxy and for his/her legal successors. This rule shall not be applied if the third party knew or could know about the proxy termination. The law may establish the right of a person to issue irrevocable proxies for a certain period of time.

Chapter 5. Limitation of Action

Limitation of action shall be a period within which a person may file a claim for protection of his/her civil right or interest. General limitation of action shall be established for three years. For certain types of claims the law may establish a special limitation of action, either shorter or longer than the general limitation of action. A one-year limitation of action shall be applied to the claims:

1) for recovery of a forfeit (penalty, fine);

2) for disclaimer of false information placed in mass media.

In this case limitation of action shall be counted off either from the day of the information placement in mass media or from the day when a person learned or could learn about this information;

3) for transfer of the buyer's rights and obligations to a co-owner in case of violation of a preferential right to buy a share in the joint shared ownership right;

4) in connection with defects of the sold goods;

5) for cancellation of a contract of donation;

6) in connection with freight, mail transportation;

7) for appeal of actions of a testamentary executor.

A limitation period established by the law may be increased by agreement of the parties. An agreement to increase the limitation period shall be concluded in writing. A limitation period established by the law may not be reduced by agreement of the parties.

Duration of a limitation period shall begin from the day when a person learned or could learn about violation of his/her right or about a person who violated the right. Duration of a limitation period for claims to invalidate a transaction concluded under the influence of violence shall begin from the day of the violence termination. Duration of a limitation period for claims to apply consequences of a void transaction shall begin from the day when its execution commenced.

For obligations the performance period of which is not established or established at the moment of a claim, duration of a limitation period shall start from the day when the creditor acquires the right to claim the obligation fulfillment.

A limitation of action shall be suspended:

1) if an extraordinary event or event inevitable under the circumstances hindered a claim filing (force majeure);

2) in case of deferment of an obligation performance (moratorium) on the grounds established by the law;

3) in case of suspension of effect of the law or any other regulatory act that governs respective relationship;

4) if a plaintiff or a defendant are the members of the Armed Forces of Ukraine or any other military units established pursuant to the law, transferred into state of martial law.

Limitation of action shall be discontinued if a person files an action against one of several debtors, and if the subject of action is only a part of the claim to which the plaintiff is entitled.

Dismissal of the action shall not suspend the limitation of action. If the court dismisses the action filed under criminal procedure, the limitation of action commenced prior to the action filing shall be suspended until enforcement of the court decision by which the action was dismissed.

When the limitation period to the principal claim expires, it shall be considered that the limitation period to an additional claim (recovery of a forfeit, seizure of pledged property, etc.) has also expired.

A person who fulfilled an obligation after the limitation period expiration shall have no right to demand reversal of performance, even if that person was not aware of the expiration of the limitation period at the moment of performance. An application to protect a civil right or interest shall be accepted for consideration by a court irrespective of the expiration of the limitation period.

SECTION 4

SUPPLY AGREEMENT

Chapter 1. The Concept and Value of the Supply Agreement

The most appropriate form of legal regulation of business relations of production and goods supply is a supply agreement. The agreement is a basic document that defines the rights and obligations of supply parties of all types of goods. Enterprises are free to choose the subject of the agreement, to determine the obligations, and free of any other terms of economic relations, except the supply of goods under interstate agreements.

Supply agreement is economic agreement that is one of the varieties of the sales contract and is similar in form. Under this agreement the supplier agrees to transfer the goods to the buyer's possession (full economic management or operational management) within a prescribed period (term), which do not coincide with the moment of concluding the agreement. Buyer agrees to accept the goods and pay him a sum of money. Parties under the supply agreement are the entrepreneurs.

Entrepreneurial business is an independent, systematic initiative. The subjects of such business (entrepreneurs) may be: citizens of Ukraine and other countries, who have unlimited legal capacity; legal entities of all forms of ownership.

The supply is referred to the variety of sale. Compared with the traditional contract of purchase and sale, supply agreement has certain characteristics, namely:

1) there is a long period of time between the time of signing and the moment of actual execution;

2) at the time of agreement concluding, the supplier usually does not have goods, so the agreement is concluded about future goods;

3) the subject of supply cannot be real property;

4) the subject of supply is a product designed for the business or other economic activity, while the subject of sale can be goods of any use;

5) the parties of the supply agreement are legal entities (mainly subjects of enterprises) and individual entrepreneurs.

According to the abovementioned, the object of the supply agreement is a product that is intended for business or other purposes not related to personal (family, household) consumption. In particular, these products are designed for industrial consumption (raw materials, equipment, etc.), or products for sale on the market or for industrial processing (for example, sugar for confectionery).

In a market economy conditions the purchase of resources by entrepreneur is made mostly at the market of goods and services, that have no funds and limits directly from manufacturers, in the wholesale trade, including fairs, markets, auctions or commercial intermediaries.

Directly supply contract is consensual, bilateral and compensated.

The agreement is concluded as consensual since the parties achieved consent on all essential terms. The lack of proper reaction for a specified period of supplier to the buyer's proposals about the agreement terms or to the decision of the arbitration court concerning pre-contract dispute in cases stipulated by the agreement or by the law are also compared to the agreement of the parties.

The supply agreement is bilateral, because rights and obligations arise for both parties. It is commutative agreement, because the production received from the supplier is paid by buyer on the basis of negotiated prices.

Regulations of contractual relationship concerning the supply of products are realized in different forms. Issuing laws and regulations, the state carries out regulation of these relations. First of all, interstate agreement of 20 March 1992 "On General Conditions of Supply of Goods between the Organizations of the Commonwealth of Independent States" operates in the sphere of the supply. The agreement extends to the relationship between business entities (regardless of

ownership forms) of the Commonwealth states on the basis of interstate economic relations.

Business entities are defined as the enterprises, their associations, organizations of any organizational forms, as well as citizens who have entrepreneur status under the operation of the laws in those states.

And goods (commodity) are defined as consumer goods and products for industrial purposes.

Along with that the Cabinet of Ministers of Ukraine approved a temporary provision for co-product supply for industrial purposes (1993), but it has a narrow scope of activity, because it regulates relations between business entities in the domestic market of Ukraine concerning the cooperative supply of parts, sub-products, semi-finished products, components and other products of industrial or cross-industrial appointment made according to the technical documentation of the consumer, specifications and standards that are necessary for the manufacture of the final production.

According to the Agreement on General Conditions and Mechanisms of Support of Industrial Cooperation Development of Member States Enterprises and Branches of the Commonwealth of Independent States (CIS) of 23 December 1993 and the Protocol for the mechanism of realization of this Agreement of 15 April 1994 the Cabinet of Ministers of Ukraine on the basis of resolution dated by 18 May 1994 approved the Regulations on the order of supply and customs registration of production for industrial cooperation of enterprises and industries of CIS countries.

Supply of production for industrial cooperation is a supply of raw materials, materials, components, parts, spare parts, semi-finished pieces, components and other products of industry and cross-industry destination that are interrelated and necessary for the collective production of the final product.

Supply of the production for state orders (contracts) is performed according to the Law of Ukraine of 22 December 1995 “On the Supply of Production for State Needs”.

Relationships concerning supply are also regulated by the Civil Code of Ukraine. The appropriate rules of purchase and sale can be applied to supply.

According to the Law of Ukraine of 22 December 1995 "On the Supply of Production for State Needs" satisfaction of the needs for products required for solving socio-economic problems, maintaining the country's defense and its security, creating and maintaining the proper level of state material reserves, the realization of civil and international programs, the functioning of public authorities is performed by means of government contracts and concluded on the basis of state contracts (agreements). State customers are the ministries, other executive authorities as well as state institutions and organizations authorized by the Government to enter into public contracts with executive of and for who was given funds from the state budget for this purpose. The executives of government contract may be business entities of Ukraine of any form of ownership. For the executives of the government contract, based wholly or partly on public property as well as for business entities of all forms of ownership – monopolists in the relevant product market – government contracts for products supply are compulsory, if the execution of the contract does not cause them losses.

Supply agreement as an agreement concluded between organizations in the written form and executed by settling a single document signed by the parties and by the exchange of the letters, telegrams, etc., is signed by the party who sends it. In certain cases the agreement may be concluded by acceptance of the execution of the order. Regulations on supply prove the general requirement of the law regarding the written form of the supply agreement, but giving participants the freedom to choose one of several possible methods of execution of contractual relationships:

a) settling a document signed by the parties;

b) acceptance by the supplier of the buyer's order for execution;

c) exchange of telegrams, telephone messages, radiograms or fax.

The order and duration of concluding of the supply agreement depend on the form of contractual relations, selected by the parties. Standardized forms of orders,

protocols of disagreements are used for machine processing during concluding the agreements. In addition, in case of a certain contract execution the parties may use contracts, developed and recommended for accelerating and simplifying the contractual work at the enterprises.

Thus, the authorities regulating the supply for state needs by international agreements form the volume of supplies according to the type, area and suppliers. Each member of the Commonwealth informs all its members on the authority that are entitled to give notice of joining buyers to suppliers.

Supplies on the basis of the notices of joining buyers to suppliers are planned, although buyer and supplier (under certain conditions) may cancel the contract.

Being informed about the attachment, the buyer should send supplier the order-specification indicating all the necessary conditions for the supply of goods in the 20-day period. Supplier informs buyer about acceptance of the order or sends his own project of contract within 20 days after receiving the order-specification.

Supplier sends buyer the project of the written contract in two copies even if the order for supply wasn't sent by the buyer. To do this, the supplier is given 20 days from the moment of receiving a notice about attachment. The agreement is signed by the manager of business entity or persons authorized by him and is stamped. At the concluding of the agreement by means of exchange of letters, telegrams and teletypes or by means of telecommunications, each party must have evidence proving a transfer to the other part relevant proposals and receiving some answers.

A party who has received the project of agreement, signs it within 20 days and returns one copy to the other party. If it has objections to the project, they sign contract with the protocol of disagreements, about which a mandatory notation in the contract should be made. If this notation is absent such objections have no legal force.

Having received an agreement with the protocol of disagreements, supplier considers these disagreements within 20 days and includes to the agreement all accepted buyer's offers. And all unaccepted conditions are transferred to the body resolving economic disputes on the location of the supplier.

Chapter 2. The Content and Performing of the Supply Agreement

Supply agreement can play a role of a basic document that defines the rights and obligations of the parties, if the necessary conditions of supply are clearly and fully set out.

Contract is concluded when the parties achieved consent about all essential terms in the right form. The essential terms of supply agreement are: quantity, nomenclature (range), quality, term of delivery, price of goods, shipping and billing information. If such essential terms of the contract are absent, the supply agreement is not concluded.

During conclusion of long-term agreement the abovementioned conditions are agreed for the first year of supply. In the coming years, they must be approved no later than 45 days before the beginning of the supply period.

Quantity is determined on the basis of the buyer's order. As for the concept "range" – first of all, it is the distribution of goods in separate groups and their relationships. In case of products supply, instead of the term "range" the term "nomenclature" is sometimes used. The range can be:

1) grouped;

2) expanded.

Grouped range is defined as more or less significant groups of certain products.

Expanded range is a characteristic of certain groups of the production for supply by means of more detailed indicators in the contract (by the article, style, model, size, etc.).

One of the essential terms of the contract, which describes the object of supply in terms of its suitability for use for the intended purpose, is a condition of the product quality. The quality of products and goods must meet the standards, specifications, samples, or terms of the contract. According to the supply agreement quality is a set of properties and characteristics that reflect the level of innovation,

reliability and durability, production efficiency and is responsible for their ability to meet needs of consumers according to their purpose.

Decree of the Cabinet of Ministers of Ukraine stipulates that the regulatory requirements concerning the quality are established by such kinds of normative documents on standardization:

a) national standards of Ukraine;

b) industry standards;

c) standards of scientific, technical and engineering societies and associations;

d) technical specifications;

e) standards of enterprises.

The supply agreement should contain the reference to regulations that have passed state registration, on the basis of which the products will be shipped.

Contract may provide higher demands on product quality compared to regulation documents. The manufacturer certifies product quality by means of the relevant document sent to the customer with the products.

Warranty period is the term for revealing defects of supplied production, introduced by standard, technical specifications or contract, and is longer comparing with the general terms of the quality inspection period.

Parties may determine warranty in the contract if they are not provided by regulations, and even continue to have already established warranty.

According to the civil law the most important terms of the supply agreement is delivery period. There are general and specific (partial) terms. Total delivery period time coincides substantially with the term of the contract.

Some terms define the supply of production in parts, by parties within the term of the contract. The problem of establishing specific supply terms is solved at the full discretion of the parties.

The essential condition of supply agreement is a price. Total sum of agreement depends on prices and scope of supply. The price of the products as well as containers and packaging are set in accordance with the current legislation.

Execution of the supply agreement is the implementation by the parties of all rights and fulfillment of all obligations stipulated in the contract. Mutual obligation must be performed simultaneously, unless otherwise follows from the law, contract or obligation. Its main duty is to transfer to the buyer or on behalf of (quota) to another employer certain products – the supplier carries, so he either ships goods to the buyer or any other person or notify them of the readiness for delivery of products. In the latter case the buyer chooses products for the seller and takes out his own or hired means and at their own expense.

Buyer must accept and pay the established price for supplied production.

Products and goods inspection of quantity and quality often are draw up as one act.

Inspection of the products in the warehouse of the recipient is carried out in a certain period, regardless of the receipt of invoices and other documents for the products. So net weight and the quantity of product units are checked in every place at the same time with opening the container, but not later than 10 days after receiving the product. To test the quality of products during the local supply, 10 days is given, while during nonresident one – no more than 20 days. The act of hidden defects must be made within 5 days after detecting defects, but not later than four months after receiving the production by the recipient.

Results of products inspection are drawn up as an act; it is signed by all persons involved in the inspection and approved by the manager of the enterprise that is a recipient. Act of acceptance with the necessary applications is the basis for the claims and claims concerning a breach of contract.

Sales of the products are completed after its payment. Sold production is paid production, that is, when the funds are transferred on the account of the company-manufacturer.

During the execution of the supply agreement the need for changes or additions to certain terms may occur. The law prohibits unilateral refusal of the obligation or unilateral change of contract terms, except for the cases provided by

special legislation. The parties may extend the contract for a new term. Changes, termination or extension of the contract are draw up as an additional agreement, which is signed by the parties.

The cases when the buyer has the right unilaterally refuse the performance of the agreement, having warned the contractor one month before are provided by the terms of supply:

a) if the products are supplied with the quality deviation from the standard documentation;

b) if supplier exceeds a product prices and so on.

SECTION 5

THE CONTRACT OF EXCHANGE

Chapter 1. The Subject Matter of Contracts of Exchange

Contract of exchange (barter) – is a contract, in accordance with which all of the parties undertake to transfer right to ownership of items of goods to each other in exchange for another item. Contract of exchange belongs to the group of contracts, which mediate the change of ownership.

Juridical characteristics of contract of exchange are as follows:

– bilateral (it means that there are two parties entering into a contract);

– consensual (agreement takes effect after the moment of obtaining satisfactory settlements between the parties);

– extra paid (it means that in accordance with the contracts of exchange it can be foreseen, that the additional payment must be obtained, if the item of good of lower cost is exchanged for one of higher cost . In this case, the combination of purchase and sale agreement and contract of exchange elements are involved.

The parties of a contract of exchange might be both individual persons and legal bodies. The most significant peculiarity of contracts of exchange is the fact that all of its parties are salespeople of items, which he/she exchanges, and the purchaser of ones, he/she obtains in exchange for.

Under the legal relations, the exchanging by parties of their property is called contract of exchange. The legal relations called barter are the ones, where there is a material exchange for activities/works (services) or service exchange itself.

According to the 715th act of the Civil Code of Ukraine, the common general regulations of purchase and sale agreement, supply contract, contractual agreement or all of them, which include elements of contracts of exchange without contradiction to the obligation are applied to the contract of barters.

The definition of barter contract concept is admitted to a wide extent in the 1st Code of the Law of Ukraine "On Enterprise Profit Taxation". According to this, barter (the exchange of goods) is a business transaction, which carries out the performing calculations for items (as if activities or services) in any form except for in cash , including any types of set-off and mutual debt repayment. Because of such actions, the credit of funds into an account of seller in order to compensate the price of such items (as in activities and services) is not provided.

Despite the fact, that barter operation is admitted to be a business transaction, in accordance with the abovementioned before law, the contractual legal disposition of barter contracts is obvious. The use of such a legal inappropriate terminology can be considered as a peculiar trait of the Law of Ukraine "On Enterprise Profit Taxation". This fact is preconditioned by its branch implementation, since in other cases the legal categories, confirmed in the Civil Code and other acts of civil legislation are ignored. But for all intents and purposes, one can make a conclusion that it is legally allowed in accordance with the 715th act of the Civil Code to exchange both items of one type (property into property) and items of different types (activities into services or otherwise).

In such a case, the issues about contract form and conditions are usually settled. These issues deal with rights of the parties, their obligations and with the responsibility for the exchanged items drawbacks.

The rules of purchase and sale agreement are not typical for contracts of exchange, or ones those contradicting its content including rules about the extra payment for an obtained items which are not applied to the contract of exchange.

The contracts of exchange are other than ones about interchange of living accommodations between people, where they stay as leaseholders, about relations that are connected with exchange of manufactured products, purchasing by customers in retail trade networks, if under some reasonable grounds, they are unacceptable by customers or are of low quality.

In contrast, the distinction of purchase agreement from the saleone, as a rule, money is not an equivalent by the contracts of exchange, but the property of equal worth. Parties of the contract of exchange obtain their ownership right of exchanged items right after the fulfillment of all property disposal obligations if there is no extra pre-engagements settled by contract itself or law regulations.

The subtype of contracts of exchange is international economy barter. The legal regulation of barter operations is implemented in accordance with the regulations of commodity exchange (barter) operations in the process of international economy activity Act of Ukraine (dated from 23 December 1998). The barter operation in the process of international economy activity is one of the types of export-import operations formalized by the barter agreement or one with a mixed payment form.

In a line with the latest agreement, the partial payment of export (import) supply is provided in a natural form between the parties of Ukrainian international economy activity and foreign business activities body, providing the price-balanced exchange of items, works, and services in any combination. Such agreements are not mediated by cash flow of cashless funds form.

The contracts will include the completion date which is the date when one of the contract parties becomes an owner of property. At exchange of contracts, any needed deposit must be paid, and arrangements for building insurance must be made so that the property is insured from that day. Usually, the present insurer will cover this new property free of increased premium until the completion date.

The exchange of contracts can occur many weeks or months after the sale offer has been agreed in principle. This contrasts with the most countries where the house sale becomes legally binding very quickly.

The short history of contracts of exchange in Ukraine

Until recently, under the conditions of centrally planned economy, the contract of exchange was not widely used. Moreover, the sphere of its application was always narrowing. Thus, according to the valid legislation, the contract of exchange where

both parties were state establishments could have been settled only in a case of situation which was mentioned by rules of legislation. The contract of exchange between collective farms and others both cooperative and relative to the service of the community organizations should have been settled only within the frames of their own legal capacity without law contradictions.

The citizens were entering into the contracts of exchange which were of household mode. As a rule, the items exchanged between government bodies, organizations or citizens were banned. The presence of such and other prohibitions concerning the contract of exchange application in the sphere of items exchange was determined by centrally planned economy of material values distributions.

Only after the beginning of new economic reforms which were market-oriented, and after the adoption of new legislation about property, a new and significant meaning was given to contracts of exchange. In the context of Ukraine transition to the market economy, the reformation of product distribution system, the appearance of disproportions in the manufacturing structure and the absence of funds sufficient for business development, the exchange of items in the form of barter agreement became more and more widely used throughout the country. Eventually a few negative tendencies were the cause. Barter agreements can retard the level of commodity circulation and be promotive for the shady economy.

Moreover, under the conditions of existed floating assets shortage, parties were induced to enter into the unprofitable and in equivalent barter agreements, especially in the sphere of international economy activity.

The difference between contract of exchange and interchange

In fact, concerning the real estate, the concept of “exchange” and “interchange” are identical. The main difference lies in the subjective content of a contract (its parties) and their property right of an item of real estate.

The civil contract of exchange is characterized by the fact that owner of the property, can be the party of legal relations, and only privatized property must be the

main subject of such a contract. Concerning the contract of interchange, one of the party entering the contract must be a leaseholder — someone who does not have ownership right of the determined property (one that might be state-owned or belong to a municipal stock of dwellings), and the exchange is possible only under the permission of lessor. The exchange rights of use (for a certain property) occurs in contracts of interchange when the change of ownership rights takes place in a contract of exchange norms.

The Civil Code of Ukraine regulates the relations between parties entering a contract of exchange in comparison with a contract of interchange where some of the Housing Code norms might be applied. While interchanging the residential property, the availability of warrants is necessary which are the fundamentals for all the parties of a contract to move into the certain accommodation.

The same fundamental for a contract of exchange is a contract itself. The contract of interchange can be taken into an effect only after an executive committee of the local board decision. On the other hand, the contract of exchange is settled right after notarial certification of the agreement which is subsequently subject to a state registration.

The agreement of interchange goes into an effect after the moment of obtaining the warrants and contract of exchange – only after its state registration. The agreement of the leaseholder family members is required for the contract of interchange, even if they are temporally absent. There is also a need of lessor permission.

In order to negotiate about the contract of exchange, there must be an agreement of proprietors if they exist. The exchange of real estate can be carried out on any other items of civil legal relations while the interchange is performed only between living accommodations. The most important is that the deterioration of living conditions because of interchange is banned.

Chapter 2. Required Documents for Contracts of Exchange

Required documents (originals): valid regular passports (if a person is a foreign citizen, then the translation of the passport, visa and residence card is required).

Documents which are required from the private entrepreneurs:

– certificate of incorporation;

– taxpayer ID assignment certificate;

– extract from the Unified State Register of Private Entrepreneurs (the execution time is recommended – no sooner than 14 days before application to the notary public office).

Documents which are required from the legal entities:

– incorporation resolution/incorporation protocol;

– articles of association and amendments (if there are any);

– memorandum of association (if there is any);

– certificates which confirm amendments to constituent documents of a legal entity;

– tax authority registration certificate;

– document which confirms power of a sole executive body of a legal entity (protocol for appointment or resolution on appointment of the company's director);

– documentation which confirms meeting statutory requirements for compliance with the major transaction rules ;

– extract from the Unified State Register of Legal Entities (the execution time is recommended – sooner than 14 days before the application to the notary public office).

Documents certifying the ownership of mortgaged property:

for real estate:

– title deeds (sales and purchase agreement, contract of exchange, certificate of state registration of ownership, etc.);

– cadastral certificate;

– there is no seizure and distain extract from the Uniform State Register of Immovable Property Rights and Transactions (local department of an authority for state registration of immovable property rights and transactions);

for automobiles: vehicle certificate of ownership.

From this perspective, the most specific is an exchange of land property.

That is why, the following significant conditions must be assigned in the contract of exchange with accordance to the 132th rule of the Land Code of Ukraine:

– the link to the document, confirming the ownership right of land property;

– the data concerning the interdiction absence for dispossession of land property or any limits connected with its usage (lease or pawn);

– the detailed description of item itself (the targeted use, place of location and square).

Chapter 3. Steps to Follow to Ensure the Exchange Process Runs Smoothly

Getting your property acquisition finalized can be a stressful experience as you wait around for lawyers to finalize the deal and money to come into your account from the bank. The exchange and completion stage is the final hurdle to getting onto the property ladder and makes your transaction official. However, there are still steps to follow to ensure the process runs smoothly.

How do you exchange contracts on a house?

Solicitors and conveyances, acting on behalf of contract parties, manage the exchange and completion stage. They will put the property transaction in writing to make sure the price is agreed and it is clear what is included in the purchase such as the size of the property and whether certain furniture items are included or excluded (if certain property as living dwellings are exchanged).

Once terms have been agreed, the contracts will be exchanged, at which point both sides of the deal are legally bound to go ahead with it on the terms agreed and a completion date will be provided. The new owner of the property will also be added to the Land Registry. When the time to exchange contracts comes, the buyer must put down a deposit; typically, this is 10 per cent of the purchase price. If they pull out of the deal, they forfeit their deposit, if the seller pulls out then the buyer can sue them for compensation.

Who insures the property between exchange and completion?

Both parties will almost certainly be responsible for the buildings insurance for the period between exchange and completion, but you should make sure the contracts state who has to arrange the cover. It is a good idea to negotiate a right to end the contract if the property is destroyed or substantially damaged, as it will be very difficult to arrange a mortgage on a property that has been substantially damaged. Even if one from the parties who are entering into the contract has agreed to insure between exchange and completion, you should ask for a right to end the contract in case of substantial damage and ask for the insurer to be informed of the upcoming exchange. It can take from 7 to 28 days between exchange and completion.

Is it too late to change your mind if you decided not to exchange your items of goods?

Once contracts have been signed, it is very difficult for one of the parties to back out. Once you have exchanged contracts, you will enter into a legally binding contract to exchange item of goods. If do not, you will lose your deposit and you can be sued.

What happens once after completion?

Your solicitor will have finalized a completion date and all the legal paperwork will be finished for both parties to be the owners on the relevant date. The contract of exchange is the final step in house purchase, under Ukrainian law, and occurs after the solicitor has carried out all necessary searches and there is agreement to the

contract terms. Once each party has signed the contracts and they have been exchanged, they are binding.

The contracts will include a completion date which is the date when the new owner will acquire the property. At exchange of contracts, any deposit needed has to be paid, and arrangements for building insurance must be made so that the property is insured from that day. Usually, the present insurer will cover this new property free of increased premium until the completion date.

SECTION 6

COMMERCIAL CONCESSION

Chapter 1. The Subject Matter of Commercial Concession Agreement

Commercial concession (foreign counterparts – franchising, franchise) is the best means of ensuring the expansion of commercial organizations (usually large) without the burden of the establishment of branches and subsidiaries in certain areas (in another state).

With the help of franchise agreements commercial organization holder is able to increase the production of certain goods (some services) to the maintenance of appropriate (usually high) standards of quality, involvement of other entities and supervising their activities. Thus, quickly established extensive network of commercial business is the right-holder.

Commercial concession as a form of business that is based on the relevant agreement (franchise) has gained considerable popularity only in the 70s of XX century (although in the 30 years of the century such contracts were used in the US for the production and marketing of products). The main distribution area of franchising: automotive service centers and services, construction and repair work, beauty salons and fashion services, pharmacies, residential, hospitality services, restaurants, fast service enterprises, etc.

For the purpose of legal Commercial Concession Agreements intended to transfer the right to use a set of rights that include the right holder.

The Subject matter commercial concession agreement shell be the right to use IPR objects (trademarks, industrial samples, inventions, works of art, commercial secrets, etc.), commercial experience and business reputation.

Commercial concession may stipulate the use of the subject matter of the agreement mentioning or not mentioning the use area for a specific fields of the civil turnover (Art.1116 of the Civil Code of Ukraine).

The parties to a commercial concession agreement may be physical and legal entities – subjects of entrepreneurship (Art.1117 of the Civil Code of Ukraine).

Commercial concession agreement shall be concluded in writing. In case of violating the written form of a concession agreement such agreement shall be invalid (Art.1118 of the Civil Code of Ukraine).

Chapter 2. Commercial Sub-Concession Agreement

In cases stipulated by the commercial concession agreement the user may conclude into a commercial sub-concession agreement under which he/she shall grant to another person (sub-user) the use right for a set rights or part there of granted to him/her by the titleholder on the provisions agreed upon with the titleholder or determined by the commercial concession agreement.

Commercial sub-concession agreement shall be regulated by the provisions on commercial concession agreement established by this Code or by the other law, unless otherwise results from the specifies of sub-concession user and sub-user shall bear solidary responsibility to a titleholder for the losses inflicted.

Invalidation of a commercial concession agreement shall result in invalidation of a commercial sub-concession agreement (Art. 1119 of the Civil Code of Ukraine).

SECTION 7

THE LOAN AGREEMENT

Chapter 1. Characteristics of the Loan Agreement

The loan agreement is a civil document which defines mutual legal rights and obligations and economic responsibility between financial institutions (commercial banks, credit unions, etc.) and the client (borrower) over a credit transaction.

The main requirement for the content of the credit agreement consists in so that it contained the following legal rules that would regulate the whole complex of relations between financial institutions with the client (borrower).

Credit contracts are in writing and cannot be changed unilaterally without the consent of the parties. Party under the credit agreement is a bank, not a credit management (department) bank or another of its department. In case of violation of the terms of a concluded contract the structural unit of the bank on their behalf will be invalidated. Changes to the agreement are made with the agreement of both parties. The loan agreement must be signed by authorized persons of parties who enter into it. Disputes regarding the contract in case of disagreement between the parties are considered by the court.

The structure of the loan agreement should include the following components: preamble which indicates the names of the parties and their legal form; object and amount of the contract; (loan purpose, amount, term loan, the value of annual interest are specified, the number and date of the contract are indicated); the condition of credit, security agreement, contract of guarantee (warranty), securities or other documents are specifically indicated; loans to banks granted to all borrowers and property funds are also specified); procedure for granting and repayment of loans (specific mechanism for issuance and repayment of the loan from abovementioned); liabilities of the bank and the borrower (the bank agrees to open a borrower (specified

number) loan on credit, the borrower agrees to use the loan for purposes specified in the contract and ensures credit repayment and payment of accrued interest on bank's current account under the terms of term liabilities); the right of bank and borrower (the bank is entitled in case of non-compliance with the loan agreement to terminate it and claim to refund the loan with payment of a fine stated as a percentage of the amount of the loan; the borrower has the right to prematurely terminate the loan agreement completely returning obtained loan, including the interest on its use, previously notifying the bank); sanctions in case of default of the contract; the order of consideration of disputes (they are settled in accordance with the applicable law in arbitration); special conditions (e. g. order amending the agreement, changes in the contract drawn by further agreement of the parties); term of the contract (term of the loan agreement sets the date of the loan till the loan and interest repayment); legal addresses and details of the parties; signatures of the parties.

1. The subject of the loan agreement is exclusively funds provided by the borrower on the terms specified in the contract. This distinguishes credit agreement from the loan agreement, the subject of which can be either cash or things marked by generic features.

Classification of loans by the subject of corresponding agreement is contained in p. 1.11 of the Law "On Corporate Income Tax" and provides financial, trade, investment tax credits and loans. A loan does not change the picture of the object of the loan agreement as cash.

For example, sub-paragraph 1.11.2. and Art. 1 of the Act defines trade credit products that are transmitted to resident or nonresident ownership of legal entities or individuals under contract providing for deferred final settlement for a fixed period at the interest. However, subject to the credit agreement in this case is not goods, and indirectly, money that must be paid for them, but of the loan agreement paid by the recipient of goods (borrower) on deferred or installment payment.

Cash loans can be provided as non-cash and cash restricted by the legislation. For example p. 1.1 Regulations on the procedure for obtaining credit, loans in foreign currency from nonresidents and residents to provide loan foreign currency to non-residents, approved by the National Bank of Ukraine of 17 June 2004 number 270 contains warnings about the possibility of obtaining the aforementioned loans only cashless.

2. Unlike a loan agreement under which its subject is transferred to the borrower in the property, the Civil Code does not contain similar provisions for the credit agreement, specifying only lender duty "to provide funds". For example, in case of failure to respect the purposeful use of funds received loans established in the contract (Art. 1056 Civil Code), the lender has the right to halt further loan under the contract (Art. 348 Civil Code).

Also, lender has the right to refuse to provide the borrower the loan agreement provided in part or in full in the event of infringement procedures, recognition borrower's bankruptcy or other circumstances that clearly indicate that the credit granted to the borrower fails to be returned. The borrower, in turn, has the right to refuse to obtain credit in part or in full by notifying the creditor before the contract term of the grant, unless otherwise provided by contract or law.

3. The Parties loan agreement is the borrower and lender. Nominally, the borrower can be any natural or legal person, including a business entity. But the fact of the entry specified persons status "borrower" (i. e. the possibility of getting credit) depends on the provisions of the regulations that establish the features of the loan agreement of any kind, and in the end – the will of the creditor – the person who will cash. For example, Mr. With Rules of Trade in installments allows the sale of goods by installments to individuals who have a steady income and permanent residents in the locality of the business entity (seller). As for the lender when deciding on the loan as it analyzes the creditworthiness of the borrower and other factors (uses of funds, provision of execution of the loan agreement, etc.).

The possibility of becoming a lender is associated with the status of the person providing the loan of any kind. Thus, the creditor under finance (including banking) loan can be a bank or other financial (credit) institution – subparagraph p. 1.11 of the Law "On Corporate Income Tax" part 5 of the Law "On Financial Services and State Regulation of Financial Services". "Another financial institution" terminology century, 1054 Civil Code, which provides loans of this type are, in particular, credit union (see the Law of Ukraine dated 20 December 2001 "On credit unions").

The list of potential lenders for commercial credit contracts (terminology art. 1057 Civil Code and art. 347 Civil Code – commercial loans) are contained in paragraph 2 of the Rules trade in installments, the content of which creditors are:

– business entities, based on the state property or on the property of the territorial community;

– business entities or other forms of property pursuant to their constitutional documents.

4. The borrower agrees to repay the loan and pay interest. Unlike a loan, which allows free use of property, payment of interest on the loan contract, the general rule is mandatory. According to part 346 Civil Code interest rate usually cannot be lower than the interest rate on loans and the interest rate paid on deposits. Providing interest-free loans are prohibited, except as provided by the law (see in particular, art. 17 of the Law of Ukraine dated July 4, 2002 "On innovation activity"), which allows full or partial (50 %) interest-free loans (for terms of inflation indexation) priority innovation projects from the state budget of Ukraine, the budget of the Autonomous Republic of Crimea and local budgets).

5. In accordance with Art. 1055 CC a credit agreement shall be in writing. The loan agreement signed with non-compliance in writing, is void.

The loan agreement as opposed to a loan agreement is a consensual agreement and shall take effect from the date the parties reach agreement on all essential terms. Creditor has the right to refuse to provide the borrower the loan agreement provided in part or in full breach of procedure for recognition bankrupt borrower or other

circumstances which clearly indicate that the credit given to the borrower fails to be returned. The borrower has the right to refuse to obtain credit in part or in full by notifying the creditor before the contract term of the grant, unless otherwise provided by contract or law.

Chapter 2. Classification of loans

There are several classifications of loans in legal acts. In particular, in addition to the classification of loans on the basis of subject matter relevant agreement contained in the law “On Profit Tax”, and other types of loans referred to in the Guidelines on accounting credit unions and united credit union were approved. The State Commission for Regulation of Financial Services of Ukraine from 18 December 2003 № 171 Paragraph 3.1 of this document classifies loans by the following features:

1. Available for use: with a maturity of up to 3 months; with a maturity of 3 to 12 months; maturing more than 12 months.

2. For the purpose: consumer; business.

3. The level of security: unsecured; secured (mortgage, deposit, penalty, surety, maintenance of the warranty).

4. The level of compliance by the borrower specified mode of payment: credit with the normal mode of payment; overdue credit for which violation of the mode of payment comprises 365 days; bad loans; the loan defaults followed by violation of the mode of payment to 365 days; hopeless credit is a loan on which there is confidence in its non return and for which there is proof of impossibility of the recovery or for which the statute of limitations has expired.

Chapter 3. Insurance – Important Element to Decrease of Credit Risks

Carrying out of mortgage operations is connected with definite risks, to which the risk of loss (destruction) or damage of the subject of gage are referred. Insurance allows considerably reduce this kind of risks.

As a rule, the beneficiary according to agreement on insurance of real estate being subject of the gage, is nominated the pledge that is the creditor under liabilities is backed with the gage. However and in cases when the gaged property is insured for the benefit of other persons (for example, for the benefit of the pledger), for the purpose to protect interests of the pledger-creditor has the right to satisfy claims under liabilities backed with the mortgage directly from insurance indemnity paid in case of loss or damage of the gaged property. The indicated requirement is subject to satisfaction on priority basis before satisfaction of claims of other creditors of the pledge and persons, to whose benefit the insurance is carried out.

If pursuant to the terms and conditions of the agreement of insurance the gaged property is insured for the sum lower than the total cost of property, than in case of insured accident which has entailed loss or damage of insured property, insurance company reimburses to the pledger only the part of losses calculated proportionally to ratio of the sum of insurance to the full (insurance) cost of the gaged property.

Insurance agreement may stipulate higher size of insurance indemnity but not exceeding the full (insurance) cost of property. Insurance of gaged property is one of important terms and conditions of agreement on mortgage. Pursuant to the Article 35 of the law on mortgage if the pledger does not fulfill his/her responsibility to insure the gaged property, the pledger has the right to require advanced fulfillment of liabilities backed by the mortgage, and if such demand is not satisfied, the pledger has the right to impose collection on the gaged property.

Chapter 4. Foreign Experience of Mortgage Crediting

The examination of the world experience of mortgage credit organization shows that this market has considerable potential.

The mortgage banks appeared for the first time in Germany in XVIII century. The first mortgage bank was the state bank, founded in Silesia in 1770 for rendering financial support to large landowners. At the beginning of XIX century the activity of mortgage banks was extended on the small landlord properties, and then on the peasant lands. In the middle of 1960s there were 13 state and 25 private land banks in Germany. The control package of shares of majority of the banks belonged to large banks.

There is no similar strict system of mortgage banks in other countries. So in the USA in 1916 the land banks were organized in 12 districts for issuing long-term loans under collateral of land. At the present time the mortgage credits in the USA are granted on the whole by loan-savings associations, mutual savings banks and small farmers banks which have regional meaning.

In Canada the mortgage banks are engaged on the whole in crediting of operations with real estate. At the beginning the object of their activity was crediting of agriculture under collateral of land and agricultural constructions, and then – in principle housing construction.

In France the biggest land bank and its affiliate “Office of businessmen” grant credits to landowners and construction companies for housing and production construction. Mortgage operations are also realized by the bank of land crediting (French land bank) which was founded in 1853. The bank credits least on the whole the large construction for the period from 3 to 20 years.

In the European countries, as Finland, Sweden, Belgium, Holland, there are both private and state mortgage banks. So in Finland the private banks grant mortgage credits. Real estate serves as collateral – land and constructions, both

production and non-production. The banks mobilize more than 70 % of means by issuing mortgage bonds. There are four mortgage banks function which are under state control in Sweden. They are engaged in crediting of housing construction, agriculture, shipbuilding, and also trade. In Belgium the special credit organizations realize operations of granting long-term loans which form so-called state credit section. This section consists of Central department of mortgage crediting the loans of which are guaranteed by the state. In Holland the mortgage credits are granted by agricultural credit institutions organized on cooperative basis. They are unified by the Central cooperative peasant bank (Rabobank).

There are mortgage banks in some developing countries (Argentina, Mexico, Nigeria and others).

Now we will consider some distinctive features of organization of mortgage crediting in developed countries. The experience of these countries in this sphere to some extent can be used in the conditions of Russia.

For the countries of Romanic German right (The whole Western Europe, except Denmark) the similar regime of mortgage is typical: notary certified act, land-survey or land book, publications of mortgage ant other essential formalities.

The registration of mortgage is realized by state officials (in countries with land book – by the judge). He registers all acts of law of estate on transactions with real estate (sale, purchase, servitude, privileges and others) and also forms real and personal card-index. With his help it is possible to receive real picture of mortgage and privileges with respect to real estate. All these factors permit creditor to be convinced of the fact that:

– the mortgage property really exists in acts (with the help of land-survey or land book);

– the property is not mortgaged (with the help of card-index of registration or judge).

Without abovementioned services it is impossible to create good functioning safe mortgage system. Otherwise great difficulties may appear for organizations which grant loans.

If the creditors do not have a strict idea of mortgaged property, they can suffer losses because of the reason that such property does not exist. Moreover because of the fault in records which should be kept in strict chronological order, the creditor can lose his preferential right which will be transferred to other creditors.

In other countries the conception of mortgage is more flexible and less formalized, especially in the countries of English Saxon right with regime "Equity & Common Law". There is no necessity in naturally certified act, and mortgage can bear general character, that is the object of mortgage is not emphasized or the publication is absent. Two abovementioned systems are used in Denmark.

Why in case of availability of vast own experience before revolution and possibility of using the experience of developed countries the mortgage in our country did not occupy adequate place?

The claims on this question can be made to all participants of the market – borrowers, creditors and the state. And first of all to the state, because the favourable legal base has not been created till now, by no means the creation of the secondary market is stimulated. The latter is very important. Many economists think, that the secondary market will become the kernel round which the whole structure will begin develop. Four-level similar system (and rather effective) already exists in the USA in which federal agency of mortgage crediting is introduced as an additional element in chain between links "the state" and "mortgage bank" – it is to some extent the agent of federal government. And there are several such agents in the USA – Federal National Association, Federal Homebuilding Loan Mortgage Corporation, Federal Land banks created for crediting under mortgage of farming lands and which act in accordance with the principles of above mentioned associations, and others. All these organizations represent original areas on which the present segment of the securities market functions. Receiving the guarantee from the government these associations

buy the pledges from private financial institutions. In their turn the monetary means come to associations from the sale of own securities. The profit received from the trade of these securities is invested to great extent to the homebuilding and in this manner the retrospective link is affected.

Thus the importance of existing of such associations is determined by those functions, which they realize: development of standards of mortgage crediting, assistance in support of liquidity of banks through refinancing of some types of credits, issuing of own securities for attraction of new investments in the sphere of homebuilding. It is necessary to note that this section of the market of debentures is the largest in the world in accordance with the volume of attracted capital.

The examination of the world experience of mortgage credit organization shows, that this market has considerable potential. It is important that it help to resolve one of the sharpest social question – providing the population with dwelling.

SECTION 8

INSURANCE CONTRACT

Chapter 1. The Concept and Basic Requirements of Insurance Contracts

According to the Law of Ukraine insurance contracts are:

– bilateral as the contract respective rights and obligations arise each of the insured so and the insurer;

– real that became valid from the date of the first insurance payment, unless otherwise is not provided by contract;

– onerous because the policyholder pays the rate of insurance, and the insurer – in case of the insured event;

– aleatory – a contract for risk which proclaims that the parties cannot clearly define the limits of their duties, and the loss or enrichment of one party depends on the case 1.

The parties of the insurance contract are the insurer and the insured. The participants of this contract are also insured person, beneficiary, insurance agent and insurance broker. Insurer is a person who assumes the risk of loss of property, injury or death of the insured and obligates when certain events may happen to pay a certain sum to insured or another authorized person.

According to Art. 2 of the Law of Ukraine "On Insurance" insurers are admitted as financial institutions which are established as joint stock, limited partnership or additional liability according to the Law of Ukraine "On Business Associations" taking into account peculiarities provided by this Law, and received in the prescribed manner a license to conduct business of insurance. The power of the right to issue such a license includes State Commission for Regulation of Financial Services Authority of Ukraine.

Insured is a person who insures himself, his property or third parties and their property from the occurrence of certain events. Insurers are admitted as legal entities and capable individuals who have entered into insurance contracts with insurers or are established in accordance with the law.

The insured person is a natural person whose life or health are insured under a contract of personal insurance or liability insurance. Insurers may exercise insurance activity through insurance intermediaries: insurance brokers and insurance agents. Insurance brokers are legal entities or citizens who are duly registered as business entities and implement a fee brokering insurance on his behalf under the brokerage agreement with a person who needs insurance as the policyholder. Insurance agents are citizens or entities acting on behalf of the insurer and fulfill the part of his insurance business: make contracts of insurance, get insurance payments and carry out work related to the implementation of claims and insurance claims.

According to Art. 980 of the Civil Code of Ukraine the subject matter of insurance agreement may be property interests which do not contravene the law and are related to:

1) life, health, labour and pension provision (personal insurance);

2) possession, use and disposal of property (property insurance);

3) indemnification of damage caused by an insurant (liability insurance).

Insurance agreement shall be concluded in writing (Art. 980 of Civil Code of the Ukraine). If the insurance agreement is not concluded in writing, such agreement shall be construed as nuisance. Insurance agreement may be concluded by means of an issuance of insurance certificate (policy) by the insurer to the insurant.

The rights and obligations of the insurance contract are determined by the current legislation (Art. 988, 989 of the Civil Code of Ukraine and Art. 20, 21 of the Law of Ukraine “On insurance”) and the contract that is signed.

An insurer shall be obliged:

1) to familiarize the insurant with terms and conditions of insurance;

2) to take steps to prepare all necessary documents to provide for the timely remittance of insurance payment to the insurant within 2 working days after the insurance accident;

3) to effect insurance payment within the period defined by the agreement in case of the insurance accident.

Insurance payment under the personal insurance agreement shall be effected regardless of the amount paid according to the state social insurance, social provision and indemnification for damage.

Insurance payment under the property and liability insurance agreement (insurance indemnification) shall not exceed the amount of real damage. Other damage shall be construed as insured if it is established by the agreement.

Insurance payment under the property insurance agreement shall be effected by the insurer within the insurance sum determined within the value of property as of the date of the agreement conclusion;

4) to indemnificate the losses incurred by the insurant aimed at preventing or reducing damage in connection with the insurance accident, if it is established by the agreement;

5) to renew conclusion of the insurance agreement per insurant's application in case if the insurer has taken steps which reduced the insurance peril or in case if the property value has risen;

6) not to disclose information about the insurant or his property status, except for the cases established by the law.

Insurance agreement may also establish other responsibilities of the insurer.

Also, an insurant shall be obliged:

1) to remit timely insurance payments (contributions, premiums) in the amount specified by the agreement;

2) during conclusion of an insurance agreement to supply information to the insurer of all circumstances within the knowledge which are essential for the

assessment of the insurance risk and continue informing about any changes in the insurance risk;

3) during conclusion of an insurance agreement to inform the insurer of other insurance agreements concluded with regard to the objects covered by the insurance. If an insurant failed to inform an insurer of the fact that the object has already been insured, a new insurance agreement shall be construed as nuisance;

4) to take steps to prevent losses caused by the insurance case and to reduce them;

5) to inform an insurer of the insurance event within the period established by the agreement.

Insurance agreement may also include other obligations of an insurant.

The list of duties under the law is not exhaustive, as parties to the agreement may establish the other one. In order to stimulate the proper implementation of the obligation the insurer is entitled to refuse the insurance payment in the event of (Art. 991 of Civil the Code of Ukraine, Art. 26 of the Law of Ukraine "On insurance"):

1) intentional actions undertaken by an insurant or a person for whose benefit such insurance agreement has been concluded, if they were aimed at the occurrence of an insurance accident, except for the actions related to the fulfillment of civil or office duties committed in the state of necessary self-defense or with regard to protection of the property, life, health, honor or business reputation;

2) intentional crime committed by an insurant or a person for whose benefit the insurance agreement has been concluded which resulted in the insurance accident;

3) submitting by an insurant of knowingly false information about an insurance object or about the fact of insurance accident occurrence;

4) receipt by an insurant of full amount of the damage indemnification under the property insurance agreement from the person who caused such damage;

5) without any admissible excuse failure by an insurant to promptly inform about the insurance accident or creation of obstacles to an insurer in defining circumstances, nature and the amount of damage;

6) other circumstances established by the law.

An insurer's decision to refuse effecting of insurance payment shall be reported to an insurant in writing and the reasons for such refusal shall be substantiated.

Chapter 2. The Rules of Signing an Insurance Contract

The basic rules of insurance

The insurer frames The terms of insurance for each type of insurance separately and approves in the State Commission for Regulation of Financial Services Authority of Ukraine by the issuance of licenses to conduct appropriate insurance.

Regulation of insurance must contain:

– the list of objects of insurance;

– the procedure for determining insurance premiums and (or) the insurance payments;

– insurance risks;

– insurance claims and limitations of insurance;

– time and place of the contract;

– order contract of insurance;

– rights and duties;

– actions of the insured in case of the insured event;

– the list of documents confirming the insured event and the amount of damages;

– procedure and terms of payment of insurance premiums;

– a term to decide to pay or refuse to pay the insurance premiums and insurance benefits;

– the conditions of termination of the contract;

– the procedure for resolving disputes;

– insurance rates for contracts of insurance other than life insurance contracts;

– insurance rates and method of calculation for life insurance contracts;

– special conditions.

The procedure of signing insurance contracts

Procedure of signing an insurance contract is governed by civil law, including the Law of Ukraine "On insurance". The process of concluding the contract consists of two stages:

1) one party offers to another to enter into contractual relations (offer);

2) perception and acceptance of the offer by the other party – acceptance indicating its agreement to conclude an agreement on the terms set out in the proposal.

Proposal contract can be defined as an offer if it meets many necessary features, in particular, the offer has to follow the will of the contract, and not just be stated about the possibility of contract. Offer must be addressed to a specific person. The proposal for the contract to one or more particular persons is an offer if it sufficiently defines and reflects the intention of the person who made the offer, to consider himself bound by the contract in case of acceptance.

To sign the contract of insurance a policyholder submits a written application to the insurer in the form prescribed by the insurer, or otherwise declares his intention to conclude an insurance contract.

By signing the insurance contract, the insurer may require the insured balance reference or statement of financial position, confirmed by the auditor (auditing firm).

The certificate of insurance (policy, certificate) which is a form of insurance can certify the fact of conducting insurance contract.

Life insurance contract may be concluded either by settling a document (the contract) signed by the parties and by exchange of letters, documents signed by the party to send. In case of giving a written application to the insured in the form prescribed by the insurer expressing the intention to conclude an insurance contract,

this contract may be concluded by sending a copy of insurance regulations and issue of insurance certificate (policy) to the insured that does not contain differences from the originating application. The replication is made in duplicate; a copy of the application shall be insured with a note of the insurer or its authorized representative on acceptance of the proposed terms of insurance.

The insurance contract comes into force from the date of the first insurance payment, unless otherwise provided by insurance.

Insurers have the right to make insurance payments only in the monetary unit of Ukraine, as a non-resident insurer – in foreign convertible monetary unit or in the monetary wait of Ukraine in cases stipulated by the current legislation of Ukraine, subject to the provisions of the p. 4 Art. 19 the of Law of Ukraine "On insurance" while signing the contracts of life insurance.

If the contract of insurance extends to foreign territory in accordance with the agreements concluded with foreign partners, the order of currency payments is regulated under the laws of Ukraine on currency regulation.

The liability of the parties under contracts of life insurance with their consent may be determined in the national monetary unit of Ukraine, and in a freely convertible monetary or calculated values that determine the actual amount of liabilities to the insurer or the date of implementation of these commitments.

Termination of Insurance Contract

The validity and termination of the contract shall be accomplished by mutual consent, and in case of:

1. Stipulating of the agreement or the law.

2. If an insurant failed to timely remit insurance payment and did not pay it within ten working days after a written claim made by an insurer to pay an insurance payment, an insurer may refuse the insurance agreement, unless otherwise is established by the agreement. An insurant or an insurer may refuse insurance agreement in other cases established by the agreement.

3. An insurant or an insurer shall be obliged to inform the other party of its intent to refuse the insurance agreement at least thirty days before the agreement termination, unless otherwise is established by the agreement. An insurer shall have no right to refuse a personal insurance agreement without consent of the insurant that does not violate the agreement, unless otherwise is established by the agreement or the law.

4. If an insurant refused the insurance agreement (except for the life insurance), an insurer shall return the insurance payments for the period remained till the agreement expiration deducting the normative expenses for the case administration defined at calculation of the insurance tariff and the insurance payments actually effected by an insurer.

5. If an insurer refused the insurance agreement (except for the life insurance), an insurer shall return to an insurant the insurance payments in full. If an insurer refused the agreement due to the insurant's failure to comply with the insurance agreement provisions, an insurer shall return to an insurant insurance payments for the remaining period till the end of the agreement deducting the normative expenses for the case administration defined at calculation of the insurance tariff and the insurance payments actually effected. Consequences for refusal of the life insurance agreement shall be established by the law.

6. If an insurant or an insurer refused the insurance agreement, such agreement shall be terminated.

According to the current legislation of Ukraine all disputes under the contracts including insurance contracts shall be settled in court.

For terminating the contract before expiry any party shall notify the other no later than 30 days before the date of termination of the contract unless it is not provided.

In case of the contract pre-term cancellation the insurer redelivers on the request of the insured the insurance payments.

If the claim of the insured is caused by the violation of the insurer of the insurance contract provisions, the insurer redelivers to the policyholder completely paid insurance payments.

In case of the contract pre-term cancellation it is not permitted to refund in cash if the payment was made in the form of cash.

Invalidity of Insurance Contract

The insurance contract must meet the general requirements, compliance with which is necessary to the force of transaction. To assess the validity of the contract one can be guided by the grounds for declaring transactions as invalid according to Art. 215–236 of the Civil Code of Ukraine. Taking these rules into account, the insurance contract will be considered invalid in the following cases:

- inconsistencies with acts of civil law and the moral foundations of society;
- fictitious and apparent nature of the transaction;
- contract with the incapacitated individual;
- contract under the influence of errors, fraud and so on.

The Civil Cjde of Ukraine (Art. 998) and Art. 29 the Law of Ukraine "On insurance" also include special cases of invalidity of a contract. Insurance agreement shall be deemed nuisance or recognized invalid in cases established by this Code.

Insurance agreement shall be deemed invalid and void by court in the following cases:

1) it was concluded after occurrence of the insurance accident;

2) an object of the insurance agreement is the property eligible to confiscation.

In addition, according to this law insurance the contract is declared invalid in the following cases:

1) when it was concluded after an insured event;

2) when the object of the contract is the property that is storable sequel under the court judgment or decision that has become final and binding the insurance contract is declared invalid in the court.

Consequences for invalidation of the insurance agreement shall be defined pursuant to the provisions on invalidation of transactions established by this Code.

SECTION 9

THE RIGHTS AND OBLIGATIONS IN THE CONTRACT OF LIFE MAINTENANCE

Speaking about the duties of alienator, under the contract of life maintenance they are actually limited by the transfer of real property ownership to the purchaser that is not burdened by collateral and movable property having significant value. In turn, the purchaser undertakes to fulfill all the requirements to provide all the necessary material's to the alienator for his maintenance and care.

Thus all kinds of material support and care services should be subject to monetary evaluation, and should be clearly stipulated in the contract.

In case the purchaser gets apartments of the alienator, he must provide alienator with material support, which means that in the contract there must be clearly determined the following: the room which will be given to the alienator and its size, location (floor), heating (room temperature), lighting. Alienator is obliged to provide the purchaser with housing where conditions are not worse than it was provided by the life maintenance contract.

Purchaser under the contract of life maintenance needs to be able to provide the alienator with the proper material support specified in the contract. Implementation of the agreement means providing all kinds of material support according to the contract. While making a contract of life maintenance the parties must identify all types of material support, scope, methods and forms.

As a general rule there must be defined the type and amount of food – how many times per day, calories, etc. Since this agreement envisages the possibility of care, the parties must clearly define what such care will comprise.

If the contract stipulates that the alienator needs medical care, there is a need to specify what kind of medical care it is – general or special medications, their number and approximate value.

Lifelong maintenance may be in keeping with clearly defined cash sum, order payments of money to be defined in the contract.

The purchaser can provide any necessary assistance required by the alienator.

Some types of maintenance or material support cannot be clearly identified in advance while making a contract.

Parties cannot know in advance what kind of care is needed or to determine the amount of necessary assistance that will be required over time by the alienator when the contract will come into force.

It is possible to provide funeral services, but even when this condition is not available in the contract, the purchaser is not exempt from this duty.

In case when alienator's part belongs to the heirs under the law or testament, the costs for burials should be distributed between the heirs and the purchaser.

According to the Civil Code of Ukraine purchaser does not have the right till alienator's death to sell, give, change the property transferred under the contract of life maintenance, put it on the security agreement, transfer this ownership to another person.

The property owned by spouses on the right of joint property can also be alienated by a contract of life maintenance. In case of death of one of property owners who was expropriated under the contract of life maintenance, the liabilities of the purchaser shall be reduced accordingly.

Creditors of the purchaser don't have the right to receive the property of the purchaser transferred under the life maintenance contract during the life of the alienator.

When the property passes to the purchaser, the risk of accidental destruction of things occurs. Accidental destruction of property does not exempt the purchaser from the duties imposed by the agreement.

SECTION 10

GROUNDS AND LEGAL CONCEQUENCE OF TERMINATION OF LIFE MAINTENANCE CONTRACT

According to the Civil Code of Ukraine lifelong maintenance contract may be terminated by a court decision, at the request of a third party, or alienator in case if the purchaser doesn't fulfill his duties.

Failure or inappropriate performance of duties do not always lead to termination.

The size of the damages is determined in conformity to the monetary assessment specified in the contract. In exceptional cases there is an opportunity not to sue to terminate the life maintenance contract, and the obligation of the purchaser to fulfill the obligations undertaken or the recovery of monetary damages of all kinds of material support specified in the contract.

Also, the contract of life maintenance may be terminated at the discretion of the purchaser when, owing to circumstances beyond his control, the situation concerning his property cardinally changed so that he is unable to provide adequate financial support to the alienator stipulated in the contract.

The Civil Code does not give a list of such grounds. This may include the disability of the purchaser moving to another location and denial of changing the place of residence by alienator, inability to perform his duties because of deterioration of the purchaser's property and so on.

In this case, it depends on the length of the maintenance but the court may retain the property right for purchaser of the property.

The consequences of terminating the life maintenance contract depend on the reasons for its termination.

If the contract was terminated due to failure or improper performance of the duties by the purchaser, the latter must return the property to the alienator.

In this case, property ownership transferred under the life maintenance contract to the purchaser is terminated after the termination of contract relations for the mentioned reasons, and alienator resumes the right of ownership.

In addition, expenses incurred by the purchaser for the maintenance of the property are not reimbursed.

The death of alienator of property is one of the conditions for life maintenance contract and is a legal fact that terminates the contractual relationship.

In case of termination of the contract due to default or improper performance of duties by the purchaser under the life maintenance contract the possibility of returning of the property to the alienator is provided.

If the purchaser refuses to voluntarily return the property acquired by him under the contract, the alienator has the right to address to the court.

The court determines the grounds on which the life maintenance contract was terminated, whether they are significant, the time and how maintaining was carried out or whether the care properly provided was mentioned in the contract. After considering these issues the court must decide on the possibility to leave the acquired right for property in connection with the inability to further implement his duties.

The death of purchaser is not grounds for termination lifelong maintenance contract. The rights and obligations of the purchaser under the contract are passed to his heirs including the ownership of the property transferred to the purchaser by the alienator. However, if testamentary heir refuses from the inheritance, legal heirs may be successors.

In the absence of heirs or their refusal to accept the heritage property, it returns to the alienator who acquires the right on his ownership.

With the death of the purchaser or in the absence of heirs, in case of their refusal to accept the inheritance the life maintenance contract is terminated. The immediate juridical fact of the contract termination is the refusal by heirs of the purchaser to accept inheritance or the expiration of the inheritance.

If there are no heirs or they refuse to accept the property, alienator acquires ownership of the returned property and life maintenance contract will be terminated.

As a result of liquidation of legal entity acquired property that was transferred under the life maintenance contract can be transferred to its founder (participant). It also transfers the rights and obligations of the purchaser under the life maintenance contract.

The law protects the rights of alienators and in case of liquidation of the purchaser's right to own property transferred under the life maintenance contract, it returns to the alienator.

As a result of liquidation of legal entity – acquired property can be transferred to its founder (participant), and he gets the rights and obligations of the purchaser under the life maintenance contract.

The Civil Code is silent on the legal consequences of alienator of the property transferred to several founders.

Based on the essence of the contract, the founders transfer the rights and obligations of the purchaser in proportion to their shares in the authorized capital.

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