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| **National Technical University of Ukraine “Igor Sikorsky Kyiv Polytechnic Institute”** |  | **Department of Information, Commercial and Administrative Law** |
| **Commercial Procedural Law**  **Work program of the discipline (Syllabus)** | | |

# Details of the discipline

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| --- | --- |
| Level of higher education | *First (bachelor's)* |
| Field of knowledge | *08 «Law»* |
| Specialty | *081 «Law»* |
| Educational program | *Law* |
| Discipline status | *normative* |
| Form of study | *full-time / full-time / distance / mixed* |
| Year of preparation, semester | *4th year, autumn semester* |
| The scope of discipline | *3 ECTS credits (90 hours)* |
| Semester control / control measures | *test* |
| Timetable | *on schedule* |
| Language of instruction | *Ukrainian* |
| Information about the course leader / teachers | *Lecturer: Ph. D. (Law), Associate Professor Serebriakova Yuliia*  *Oleksandrivna,*  *Practical / Seminar:*  *Ph. D. (Law), Associate Professor Serebriakova Yuliia Oleksandrivna,*  *Ph. D. (Law) Novoshitskaya Valeria Igorevna* |
| Course placement | <https://classroom.google.com/c/MTU5MzE1MDA0NjU2?cjc=gztwpch> |

# Curriculum of the discipline

# 1. Description of the discipline, its purpose, subject of study and

# learning outcomes

The discipline "Commercial Procedural Law" occupies an important place in the training of future specialists - bachelors of law.

The development of market relations has in turn led to the development of the economic sphere, the subjects of which are not always able to resolve disputes that arise between them. At the same time, the state is interested in active economic relations of business entities of various organizational and legal forms. That is why it is important to properly conduct commercial litigation, in which lawyers are directly involved - as representatives of the parties, judges and other participants in the commercial process.

The presented academic discipline is aimed at the formation of skills and abilities to provide legal support for resolving a commercial dispute in court, to be a participant in the economic process.

Assimilation of the material of the discipline by law students is a necessary prerequisite for the quality of their future performance of their professional tasks, in particular, a legal adviser of a particular enterprise, a representative of a party in a commercial dispute, and so on.

The purpose of the discipline is the formation of students' competencies:

• understand the peculiarities of the implementation and application of procedural law (FC 8);

• identify appropriate and acceptable for legal analysis facts (FC 11);

• analyze legal issues, form and justify legal positions (FC 12);

• carry out critical and systematic analysis of legal phenomena and apply the acquired knowledge in professional activities (FC 13);

• independently prepare draft acts of law enforcement (FC 15);

• to carry out procedural and documentary registration of support of consideration and decision of economic case (FC 20).

Having mastered the discipline, students:

• understand the principles on which commercial litigation is based and violation of which may be grounds for appealing a commercial court decision;

• correctly determine the jurisdiction of a particular dispute;

• will form a strategy and tactics of behavior in court, understanding their procedural status;

• draw up the correct evidence of their position in court, including the testimony of witnesses in the economic process;

• will be able to critically assess the legal position of the procedural opponent, substantiate objections, identify grounds for appealing a court decision;

• learn to form drafts of petitions, applications and complaints to the commercial court.

# Prerequisites and postrequisites of the discipline (place in the structural and logical scheme of education according to the relevant educational program)

# The study of the discipline "Commercial Procedural Law" is based on the knowledge gained by students in the discipline "Commercial Law", "Practice of the European Court of Human Rights". The discipline "Commercial Procedural Law" will be the basis for the study of disciplines "Legal regulation of enforcement proceedings", "Legal regulation of bankruptcy", "Right to a fair trial".

# The content of the discipline

**Section 1. General provisions of commercial litigation**. Basic principles and sources of commercial litigation. Forms of commercial litigation. Jurisdiction of the commercial court. Participants in the litigation. Evidence and proof in the commercial process. Procedural terms and court costs in commercial litigation. Institute of support in commercial litigation

**Section 2. Proceedings in various instances of commercial courts and execution of decisions of the commercial court**. Order proceedings**.** Claim proceedings**.** Decision of the commercial court**.** Appeal and cassation proceedings**.** Review of court decisions on newly discovered or exceptional circumstances**.** Consideration of commercial disputes by arbitration courts and the procedure for appealing their decisions in commercial courts

# Training materials and resources

The basic source of mastering the discipline "Commercial Procedural Law" is the Commercial Procedure Code, which is the basis of each topic of the discipline.

Basic literature:

1. Commercial Procedure Code of Ukraine: as amended on November 20, 2020: official text. Kyiv: Legal Unity: Alert, 2020. 190 p.

2. Commercial procedural law (in diagrams and tables): textbook. way. / author count O. Yu. Minyuk, DI Minyuk, NV Nikitchenko, KB Pochinok, MV Shapochkina; for general ed. NV Nikitchenko / State Fiscal Service of Ukraine, University of SFS of Ukraine. Chernihiv: Desna Poligraf Publishing House, 2019. 440 p.

3. Stupnik YV, Koblik MV Economic process: key theoretical aspects and samples of economic procedural documents. 2019. 312 p.

4. Baulin OV Bar exam: samples of procedural documents: a textbook. Kyiv: Alert. 2019. 287 p.

Additional materials and resources:

# Ivanyuta N.V. Functions of economic procedural law: theoretical and practical aspects: monograph. Odessa: Phoenix, 2018. 514 p.

# Chizhmar KI Commercial litigation. Procedural documents. Practical commentary and samples. CUL. 2018. 176 p.

# Bruce II Novelties of economic procedural legislation. Litigation: a textbook. Kyiv: National Academy of the Prosecutor's Office of Ukraine, 2019. 186 p.

1. Zhuravlyov DV, Chizhmar KI Appeals against court decisions in commercial litigation. CUL. 2018. 224 p. Prodivus OV, Zhuravlyov DV, Chizhmar KI, Kuznetsova NS, Babenko KA, Zhuravel VI Components of success in the economic process. CUL. 2019. 320 p.
2. Appeals of court decisions and rulings in the system of economic justice of Ukraine: a practical guide / Drozd OY, Ignatenko VV, Lebedeva AV, Petkov SV, Ramazanova U., Sobol EY, Starodubov IV Center for Educational Literature. 2017. 220 p.
3. **Doctrine of economic procedural law of Ukraine (Current topic of the issue). *Law of Ukraine***. *Право України.* 2020. №7.
4. Pigareva G. Well-known principles of administration of justice: international and national experience*. Entrepreneurship, economy and law.* 2017. №3. С. 91-94.
5. Pilkov K. Conditions of bindingity for the commercial court of the facts established in another case. *Entrepreneurship, economy and law.* 2019. №11. С.106-116.
6. Unified state register of court decisions. URL: <https://reyestr.court.gov.ua/>
7. Digests of case law of the Grand Chamber of the Supreme Court. URL: <https://supreme.court.gov.ua/supreme/pokazniki-diyalnosti/analiz>
8. Reviews of case law of cassation courts. URL: <https://supreme.court.gov.ua/supreme/pokazniki-diyalnosti/analiz>
9. Review of case law of the Commercial Court of Cassation within the Supreme Court (current case law). Decisions entered into the Unified State Register of Court Decisions for October 2020. URL: https://supreme.court.gov.ua/userfiles/media/new\_folder\_for\_uploads/supreme/Ogljad\_KGS\_10\_2020.pdf
10. Analytics on jurliga.ligazakon.net/ YURLIGA. URL: <https://jurliga.ligazakon.net/ua/analitycs/>

Periodicals, in particular "Law of Ukraine", "Entrepreneurship, Economy and Law" can be found in the methodical office (room 322-19)

In order to better master the discipline, it is advisable to get acquainted with the decisions of the Grand Chamber of the Supreme Court on issues that make up the educational content of this discipline, and with the decisions of commercial courts of various instances.

# Educational content

# Methods of mastering the discipline (educational component)

# Assimilation of the discipline "Commercial Procedural Law" takes place in lectures, practical classes and during independent work of the student.

**The structure of the discipline for full-time students**

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **№** | **NAMES TOPICS** | **Number of hours** | | | |
| *Lectures* | *Practical training* | *independent work* | *Total* |
| **Section 1. General provisions of commercial litigation** | | | | | |
| **1.** | **Topic 1.1.** Basic principles and sources of commercial litigation | 2 | 2 | 4 | 8 |
| **2.** | **Topic 1.2.** Forms of commercial litigation. Jurisdiction of the commercial court | 4 | 2 | 4 | 10 |
| **3.** | **Topic 1.3.** Participants in the litigation | 2 | 2 | 2 | 6 |
| **4.** | **Topic 1.4.** Evidence and proof in the commercial process | 2 | 2 | 2 | 6 |
| **5.** | **Topic 1.5.** Procedural terms and court costs in commercial litigation | 2 | 2 | 2 | 6 |
| **6.** | **Topic 1.6.** Institute of support in commercial litigation | 1 | 1 | 2 | 4 |
| **Section 2. Proceedings in various instances of commercial courts and execution of decisions of the commercial court** | | | | | |
| **7.** | **Topic 2.1.** Order proceedings | 1 | 1 | 2 | 4 |
| **8.** | **Topic 2.2.** Claim proceedings | 4 | 4 | 4 | 12 |
| **9.** | **Topic 2.3.** Decision of the commercial court | 2 | 2 | 2 | 6 |
| **10.** | **Topic 2.4.** Appeal and cassation proceedings | 4 | 4 | 4 | 12 |
| **11.** | **Topic 2.5.** Review of court decisions on newly discovered or exceptional circumstances | 2 | 2 | 2 | 6 |
| **12.** | **Topic 2.6.** Consideration of commercial disputes by arbitration courts and the procedure for appealing their decisions in commercial courts | 2 | 2 | 2 | 6 |
| **13.** | *Test work on the credit module* |  | 2 | 2 | 4 |
| **TOTAL:** | | **28** | **28** | **34** | **90** |

**The structure of the discipline for part-time students**

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **№** | **NAMES TOPICS** | **Кількість годин** | | | |
| **Лекційних** | **Практичних** | **Сам. раб** | **Всього** |
| **Section 1. General provisions of commercial litigation** | | | | | |
| **1.** | **Topic 1.1.** Basic principles and sources of commercial litigation | 0,5 |  | 7 | 7,5 |
| **2.** | **Topic 1.2.** Forms of commercial litigation. Jurisdiction of the commercial court | 1 |  | 7 | 8 |
| **3.** | **Topic 1.3.** Participants in the litigation | 0,5 |  | 7 | 7,5 |
| **4.** | **Topic 1.4.** Evidence and proof in the commercial process | 0,5 |  | 5 | 5,5 |
| **5.** | **Topic 1.5.** Procedural terms and court costs in commercial litigation | 0,5 |  | 5 | 5,5 |
| **6.** | **Topic 1.6.** Institute of support in commercial litigation | 1 |  | 5 | 6 |
| **Section 2. Proceedings in various instances of commercial courts and execution of decisions of the commercial court** | | | | | |
| **7.** | **Topic 2.1.** Order proceedings | 0,5 |  | 5 | 5,5 |
| **8.** | **Topic 2.2.** Claim proceedings | 1 | 1 | 7 | 9 |
| **9.** | **Topic 2.3.** Decision of the commercial court | 0,5 |  | 5 | 5,5 |
| **10.** | **Topic 2.4.** Appeal and cassation proceedings | 0,5 | 1 | 7 | 8,5 |
| **11.** | **Topic 2.5.** Review of court decisions on newly discovered or exceptional circumstances | 0,5 |  | 5 | 5,5 |
| **12.** | **Topic 2.6.** Consideration of commercial disputes by arbitration courts and the procedure for appealing their decisions in commercial courts | 1 |  | 7 | 8 |
| **13.** | *Execution of an individual task* |  |  | 8 | 8 |
| **TOTAL:** | | **8** | **2** | **80** | **90** |

**Classes for full-time students**

**Section 1. General provisions of commercial litigation**

**Topic 1.1. Basic principles and sources of commercial litigation**

*Lecture plan:*

*1. Basic principles of justice.*

*2. Sources of dispute resolution by commercial courts.*

*3. ECtHR decisions in commercial litigation.*

*Questions for discussion in practice:*

1. Economic procedural legal relations: object, subjects, grounds.

2. The place of economic procedural legislation in the system of legislation of Ukraine.

3. Sources of economic procedural law. Name 10 main normative legal acts that regulate economic procedural relations in Ukraine.

*Tasks for independent work:*

1. Describe the economic procedural law as a legal science.

2. Identify and describe the stages of change in legislation on claims settlement of commercial disputes.

3. Compare the system of commercial, administrative and general courts of Ukraine.

4. Determine which principles of commercial litigation are violated in the situation given by the teacher.

**Topic 1.2. Forms of commercial litigation. Jurisdiction of the commercial court**

*Lecture plan:*

1. General characteristics of forms of commercial litigation.

2. Cases relating to the jurisdiction of commercial courts (substantive and subjective jurisdiction).

3. Instance and territorial jurisdiction of the commercial court&

*Questions for discussion in practice:*

1. Concepts and legal bases of jurisdiction. Correlation with the concept of "competence" of the commercial court.

2. Exclusive (subject) jurisdiction of economic affairs.

3. The concept and types of jurisdiction of cases to the commercial court.

4. Procedure for transferring cases from one commercial court to another.

*Tasks for independent work:*

1. Define, characterize and systematize the criteria for delimiting the jurisdiction of commercial and administrative courts.

2. Get acquainted with the decisions of the Grand Chamber of the Supreme Court regarding the determination of the jurisdiction of commercial courts. Summarize the content of the dispute in respect of which the jurisdiction is indicated, and the operative part of the decision of the Supreme Court (indicating the number and date of the decision of the Supreme Court).

3. Determine whether subject to review in the category of economic justice disputes are a teacher.

**Topic 1.3. Participants in the litigation**

*Lecture plan:*

1. Composition of the court. Disqualification of judge.

2. The concept and composition of the trial.

3. Requirements for representatives in the economic process.

4. Other participants in the trial. Witnesses in the economic process.

*Questions for discussion in practice:*

*1.* Grounds for removal and self-removal of a judge.

2. Procedural rights and obligations of the plaintiff and defendant, third parties in the economic process.

3. Legal status of the prosecutor in commercial litigation.

4. Representatives of the parties and third parties.

*Tasks for independent work:*

1. Define the general and special rights of the parties to the proceedings.

2. Define the range of rights and responsibilities of the representative.

3. Compare the participation of witnesses in economic and civil proceedings.

4. Compare the legal status of third parties with independent claims and third parties without independent claims.

5. Make a motion to remove the judge.

**Topic 1.4. Evidence and proof in the commercial process**

*Lecture plan:*

1. The concept and types of evidence. The concept of proof.

2. Requirements for evidence.

3. Characteristics of certain types of evidence in the economic process.

*Questions for discussion in practice:*

1. The concept and types of evidence in the economic process. Belonging and admissibility of evidence.

2. Review and examination of written and physical evidence at their location.

3. Duty to prove and present evidence. Grounds for exemption from proof.

*Tasks for independent work:*

1. Describe the procedure for appointment and examination.

2. How to properly prepare written, physical, electronic evidence to present them to the court? Give a written answer with reference to the current legislation.

3. Make a request for evidence

**Topic 1.5. Procedural terms and court costs in commercial litigation.**

*Lecture plan:*

*1*. The concept and types of terms in the economic process. Calculation of procedural terms.

2. Consequences of missing the procedural term. The order of renewal or extension of the procedural term.

3. Court fees and costs related to the case.

*Questions for discussion in practice:*

1. The concept and meaning of time in court. Types of deadlines in litigation.

2. Criteria for determining court costs for professional legal assistance

3. The order of distribution and reimbursement of court costs.

*Tasks for independent work:*

1. Identify benefits for paying court fees.

2. Analyze the case law on the "seriousness" of the reasons for missing the deadlines (the position of the party to the case and the position of the court)

3. Calculate the deadlines in the situations provided by the teacher

4. Formulate a preliminary calculation of court costs according to the statement of claim provided by the teacher.

**Topic 1.6. Institute of support in commercial litigation.**

*Lecture plan:*

1. Providing evidence in the economic process.
2. Securing the claim. Ensuring court costs.

*Questions for discussion in practice:*

*1.* The procedure for revocation, appeal and execution of the decision to take measures to secure evidence.

2. The procedure for cancellation, appeal and execution of the decision on taking measures to secure the claim.

3. Procedure and grounds for securing court costs

*Tasks for independent work:*

1. Make a draft statement of action to secure the claim in corporate disputes.

**Section 2. Proceedings in various instances of commercial courts and execution of decisions of the commercial court**

**Topic 2.1.** **Order proceedings**

*Lecture plan:*

1. The concept of court order. Grounds and procedure for its issuance

2. The procedure for revoking a court order. Entry into force of a court order

*Questions for discussion in practice:*

1. Grounds for issuance and procedure for execution of a court order.

*Tasks for independent work:*

1. Determine in which cases commercial courts issue a court order on examples from the Unified State Register of Judgments.

**Topic 2.2. Claim proceedings**

*Lecture plan 1:*

1. Written statements of the parties to the case. Requirements for the statement of claim and response to it.

2. Simplified claim proceedings.

3. Settlement of the dispute with the participation of a judge.

*Lecture plan 2:*

1. Grounds for leaving the statement of claim without motion, return of the statement of claim and refusal to initiate proceedings.

2. Opening of proceedings. Preparatory proceedings. Consideration of the case on the merits

3. Leaving the statement of claim without consideration. Suspension and closure of proceedings.

*Questions for discussion in practice 1:*

1. The concept of claim in the economic process. Requirements for the form and content of the statement of claim. Determining the price of the claim.

2. Documents attached to the statement of claim. Requirements for sending the parties copies of the statement of claim and documents.

3. Response to the statement of claim. Counterclaim.

*Questions for discussion in practice 2:*

1. The order of the meeting. Term of dispute resolution.
2. Postponement of the case, break in the meeting.
3. Suspension of the proceedings and its resumption. Closure of proceedings and consequences.

*Tasks for independent work:*

1. Describe the minutes of the hearing and the requirements for it.
2. Draw up a draft (basic details in accordance with the Code of Civil Procedure of Ukraine), a statement of claim of a property nature for a refund for substandard goods
3. Write a response to the statement of claim received in the first practical lesson on this topic.

**Topic 2.3. Decision of the commercial court**

*Lecture plan:*

1. Types of decisions of the commercial court. The order of adoption, form and content of the decision of the commercial court.
2. Proclamation of the decision and its entry into force. Delivery and explanation of decisions.
3. Separate decision.

*Questions for discussion in practice:*

1. The rights of the commercial court to make a decision.
2. Making a decision and its content. Separate decision. Notification of the commercial court.
3. The content of the requirements of legality and validity of the court decision
4. The procedure for execution of decisions, rulings, resolutions of the commercial court.
5. Procedure and grounds for correcting decisions of the commercial court.

*Tasks for independent work:*

1. Determine the procedure for explaining and correcting the decision, resolution.
2. Draw a diagram "Procedure for resolving a dispute in the commercial court and execution of the decision of the commercial court"
3. Identify ways to correct the shortcomings of the court decision

**Topic 2.4. Appeal and cassation proceedings**

*Lecture plan 1:*

1. The right and characteristic features of the appeal.
2. Form and content of the appeal. Response to the appeal.
3. Powers of the appellate court. Resolution of the appellate court.

*Lecture plan 2:*

1. The right of cassation appeal.

2. The procedure and deadline for filing a cassation appeal. Form and content of the cassation appeal.

3. Powers of the cassation instance

*Questions for discussion in practice 1:*

1. Determination of the appellate instance. Deadline for filing an appeal.

2. The procedure for consideration of the appeal. Term of consideration.

3. Powers of the appellate court. Resolution of the appellate court.

*Questions for discussion in practice 2:*

1. Procedural "filters" of the cassation appeal. The procedure and deadline for filing a cassation appeal.
2. Acceptance and procedure for consideration of a cassation appeal. Powers of the cassation instance.

*Tasks for independent work:*

1.Analyze the grounds for revocation or change of decision by the appellate court.

2. Define the organizational system of the Commercial Courts of Appeal of Ukraine

3. Compare the cassation and appellate procedures for review of decisions, rulings, rulings in commercial litigation, identify common and different

4. Draft an appeal based on the plot provided by the teacher

**Topic 2.5. Review of court decisions on newly discovered or exceptional circumstances**

*Lecture plan:*

1. The concept and significance of newly discovered circumstances.
2. The concept and meaning of exceptional circumstances
3. Terms and procedure for submitting the application.
4. Powers of the court in reviewing court decisions on newly discovered or exceptional circumstances

*Questions for discussion in practice:*

1. Grounds for review of decisions, rulings, resolutions on newly discovered and exceptional circumstances.
2. Powers of the court in reviewing court decisions on newly discovered or exceptional circumstances

*Tasks for independent work:*

1. To write out specific cases of review of decisions, rulings, resolutions on newly discovered, exceptional circumstances on the basis of the analysis of decisions in the Unified state register of court decisions. Specify what was the basis for the review.

**Topic 2.6. Consideration of commercial disputes by arbitration courts and the procedure for appealing their decisions in commercial courts**

*Lecture plan:*

1. The concept of arbitration and its jurisdiction
2. The procedure for appealing and revoking the decision of the arbitral tribunal
3. The procedure for execution of the decision of the arbitral tribunal
4. The concept of international commercial arbitration and its jurisdiction

*Questions for discussion in practice:*

1. Competence and principles of arbitration courts and international arbitrations
2. Categories of disputes that cannot be considered in arbitration courts
3. Test work on the credit module

*Tasks for independent work:*

1. Define the structure of permanent arbitration courts
2. Formulate an arbitration clause in a foreign trade agreement (contract)
3. Repeat the theoretical part of the credit module

***Classes for part-time students***

**Section 1. General provisions of commercial litigation**

***Lecture 1*** is assigned to topics 1.1.- 1.3. (**1.1.** The main ambush and dzherel of the state court; **1.2.** Forms of the state court. Jurisdiction of the state court; **1.3.** Participants of the court process)

*Lecture plan:*

1. The main ambush of the court
2. Judgment of the European Court of Human Rights in commercial litigation
3. The characteristics of the forms of the state court ruling are out of the question.
4. Inform yourself that you should be brought before the jurisdiction of the state courts (subject, subjective and territorial jurisdiction).
5. Understand the warehouse of the participants in the ship process.
6. Requirements for representatives in the economic process

*Tasks for independent work:*

1. The place of economic procedural legislation in the system of legislation of Ukraine.
2. Sources of economic procedural law. Name 10 main normative legal acts that regulate economic procedural relations in Ukraine
3. Define, characterize and systematize the criteria for delimiting the jurisdiction of commercial and administrative courts.
4. Instance jurisdiction of the commercial court
5. Get acquainted with the decisions of the Grand Chamber of the Supreme Court regarding the determination of the jurisdiction of commercial courts. Summarize the content of the dispute in respect of which the jurisdiction is indicated, and the operative part of the decision of the Supreme Court (indicating the number and date of the decision of the Supreme Court).
6. Determine the exclusive jurisdiction of economic affairs.
7. The concept and types of jurisdiction (territorial jurisdiction) of cases to the commercial court.
8. The composition of the court. Grounds for removal and self-removal of a judge.
9. Define the general and special rights of the parties to the proceedings
10. Define the range of rights and responsibilities of the representative
11. Other participants in the trial. Their procedural status and the procedure for involvement in the trial.
12. Legal status of the prosecutor in commercial litigation.
13. Compare the participation of witnesses in economic and civil proceedings
14. Compare the legal status of third parties with independent claims and third parties without independent claims.

***Lecture 2*** is devoted to issues 1.4 - 1.6 (**1.4.** Evidence and proof in the economic process; **1.5.** Procedural deadlines and court costs in commercial litigation; **1.6.** Institute of support in the economic process)

*Lecture plan:*

1. The concept and types of evidence. The concept of proof.
2. Requirements for evidence.
3. The procedure for calculating procedural deadlines. Consequences of missing the procedural term. The order of renewal or extension of the procedural term.
4. Court fees and costs related to the proceedings.
5. Providing evidence in the economic process.
6. Securing the claim. Ensuring court costs.

*Tasks for independent work:*

1. Characteristics of certain types of evidence in the economic process
2. Describe the grounds, procedure for appointment and examination.
3. How to properly prepare written, physical, electronic evidence to present them to the court? Give a written answer with reference to the current legislation.
4. Criteria for determining court costs for professional legal assistance
5. The order of distribution and reimbursement of court costs. Identify benefits for paying court fees.
6. Analyze the case law on the "seriousness" of the reasons for missing the deadline (the position of the party to the case and the position of the court)
7. The procedure for revocation, appeal and execution of the decision on taking measures to secure evidence.
8. The procedure for cancellation, appeal and execution of the decision on taking measures to secure the claim.

**Section 2. Proceedings in various instances of commercial courts and execution of decisions of the commercial court.**

***Lecture 3*** provides for the study of issues of topics 2.1.- 2.3. (**2.1.** Order proceedings; **2.2.** Claim proceedings; **2.3.** Decision of the commercial court)

*Lecture plan:*

1. Judicial order in commercial litigation: grounds, procedure for issuance and procedure for its cancellation.
2. Written statements of the parties to the case. Requirements for the statement of claim and response to it.
3. Grounds for leaving the statement of claim without motion, return of the statement of claim and refusal to initiate proceedings.
4. Opening of proceedings. Preparatory proceedings. Consideration of the case on the merits
5. Leaving the statement of claim without consideration. Suspension and closure of proceedings
6. Types, procedure and form of decisions of the commercial court. Requirements for the content of decisions of the commercial court.
7. Proclamation of the decision and its entry into force. Delivery and explanation of decisions.

*Tasks for independent work:*

1. Determine in which cases the commercial courts issue a court order on the examples of the USSR
2. Describe the settlement of the dispute with the participation of a judge
3. The concept of claim in the economic process. Requirements for the form and content of the statement of claim.
4. Determine the procedure for conducting a court hearing in the preparatory proceedings and when considering the case on the merits.
5. Describe the minutes of the court hearing and the requirements for it.
6. The rights of the commercial court to make a decision.
7. Making a decision and its content. Separate decision. Notification of the commercial court.
8. The procedure for execution of decisions, rulings, resolutions of the commercial court.
9. Determine the procedure for explaining and correcting the decision, resolution.
10. Draw a diagram "Procedure for resolving a dispute in the commercial court and execution of the decision of the commercial court"
11. Identify ways to correct the shortcomings of the court decision

***Lecture 4*** is aimed at covering issues on topic 2.4. - 2.6 (**2.4.** Appeal and cassation proceedings; **2.5.** Review of court decisions on newly discovered or exceptional circumstances; **2.6.** Consideration of commercial disputes by arbitration courts and the procedure for appealing their decisions in commercial courts)

*Lecture plan:*

1. The right and characteristic features of the appeal.
2. Powers of the appellate court. Resolution of the appellate court.
3. The right of cassation appeal. The procedure and deadline for filing a cassation appeal. Powers of the cassation instance
4. The concept and significance of newly discovered and exceptional circumstances.
5. Powers of the court in reviewing court decisions on newly discovered or exceptional circumstances
6. The concept of arbitration and its jurisdiction. The concept of international commercial arbitration and its jurisdiction.
7. Procedure for appealing, revoking and enforcing decisions of arbitration courts.

*Tasks for independent work:*

1. Analyze the grounds for revocation or change of decision by the appellate court.
2. Define the organizational system of the Commercial Courts of Appeal of Ukraine
3. Compare the cassation and appellate procedures for review of decisions, rulings, rulings in commercial litigation, identify common and different
4. To write out specific cases of review of decisions, rulings, resolutions on newly discovered, exceptional circumstances on the basis of the analysis of decisions in the Unified state register of court decisions. Specify what was the basis for the review.
5. Competence and principles of arbitration courts and international arbitrations
6. Categories of disputes that cannot be considered in arbitration courts
7. Define the structure of permanent arbitration courts
8. Get acquainted with the samples of arbitration clauses of the foreign trade agreement (contract)

Part-time students have *one practical lesson* in the curriculum. Questions on topic **2.2** are submitted for such a lesson **2.2.** *Claim proceedings* and **2.4.** *Appeal and cassation proceedings*

*Questions for discussion in practice:*

1. Requirements to the form and content of the statement of claim. Determining the price of the claim. Documents attached to the statement of claim. Requirements for sending the parties copies of the statement of claim and documents.
2. Response to the statement of claim. Counterclaim.
3. Determination of the appellate instance. Form and content of the appeal.
4. Form and content of the cassation appeal.
5. Drafting of procedural documents (statement of claim; response to the statement of claim; counterclaim; appeal; cassation appeal)

# Independent student work

Independent work of a full-time student involves independent, based on the recommended educational and scientific literature, elaboration and mastering of certain provisions of the discipline; preparation for practical classes. Questions and tasks for independent work are given within each topic of the discipline. The curriculum does not provide separate topics for independent study by students. Checking the level of mastering the material of such topics is carried out in the process of discussing issues on logically related topics of the discipline in the classroom; during the calendar and final control of knowledge.

For self-study by part-time students, certain issues of the content of educational material, not covered in lectures and practical classes, homework are submitted. Questions submitted for self-study are given in the lectures, which address the relevant topics of the discipline.

While studying the study material of the discipline "Commercial Procedural Law", part-time students perform homework. The purpose of the homework is to master the conceptual apparatus of the discipline, the formation of skills of logical and consistent presentation of theoretical material on the discipline; argumentation of one's own legal position; application of the provisions of current legislation in the preparation of procedural documents. Execution of homework develops skills of independent work with educational and scientific literature, promotes formation of ability to use knowledge for the decision of the corresponding practical problems.

# Policy and control

# Policy of academic discipline (educational component)

In order to master this discipline you need to attend lectures and practical classes, perform tasks provided for independent work.

Lectures characterize the procedure for commercial litigation, requirements and rules of economic process, provided by law; emphasis is placed on the reflection of these provisions in judicial practice. It is desirable to keep a synopsis. If you miss lectures, you will need to look for these provisions yourself or ask your classmates, because at the end of the semester there will be testing of lecture material as part of the test. The result of such work is a component of your rating in the discipline.

In practical classes, the issues addressed in the lectures, "look" from the other side - as a provision of law and existing case law can be applied in a given situation. Therefore, you need to prepare for practical classes - to know the answers to the questions for discussion, which are indicated for each topic. At the beginning of the practical lesson, the teacher can conduct an express survey on such issues.

On some topics, situational tasks are solved independently by the student after the lecture, but before a practical lesson on the relevant topic. Such assignments are given to students in advance (sent to the group's e-mail, uploaded to the Classroom (if created) with a deadline) and must be uploaded to the Classroom at the specified time (deadline) or sent to the teacher by e-mail the day before the practical lesson.

On some topics, situational tasks are solved independently by the student during the practical lesson. Completion of such tasks should be uploaded to the Classroom (if created) or sent to the teacher by e-mail on the day of its execution by the time specified by the teacher.

The missed practical lesson can be rescheduled, in case of its omission for a good reason (maximum - within 2 weeks) on the day and time determined by the teacher with the prior consent of the student. A student who missed a class for a good reason (did not miss; did not sleep) and wants to increase his rating, asks the teacher to justify his skip to determine the date and time of re-composition.

Assimilation of Commercial Procedural Law is impossible without the preparation of procedural documents. Therefore, in the process of studying this discipline we will prepare projects and analyze the prepared drafts of petitions, applications and complaints to the commercial court. The rules for submitting such documents are the same as for situational tasks.

The preparation of procedural documents is evaluated and is part of your rating in the discipline.

The practical lesson for part-time students involves the discussion of issues submitted for such a practical lesson, and the preparation of procedural documents in class.

In practical classes you can use technical means, mobile phones, laptops when working on regulations; preparation of procedural documents. Audio and / or video - recording of lectures is prohibited.

Tasks for independent work, the implementation of which is provided in writing, are performed by preparing a printed document. Completed tasks are evaluated and are part of your discipline rating. At the beginning of the discipline the teacher will name those tasks of independent work which are offered to the student for performance in writing (except procedural documents) and requirements to their performance; set a deadline for such tasks. In case of similarity of the performed tasks protection of such works can be established.

At the last practical lesson the control work is carried out, which consists of test tasks (examples are given in Appendix 2). Test tasks are formulated based on lecture material and situational tasks that were solved during the study of the discipline.

Tasks at the homework for part-time students are sent to the group's e-mail and / or uploaded to the Classroom (if created) within 2 weeks of completing the lectures.

Part-time students need to upload to the Classroom (if created) or send the teacher to the e-mail address of the completed homework 2 weeks before the final control event.

**Academic integrity**

The policy and principles of academic integrity are defined in Section 3 of the Code of Honor of the National Technical University of Ukraine " Igor Sikorsky Kyiv Polytechnic Institute". Details: https://kpi.ua/code.

**Norms of ethical behavior**

Norms of ethical behavior of students and employees are defined in Section 2 of the Code of Honor of the National Technical University of Ukraine " Igor Sikorsky Kyiv Polytechnic Institute". Details: <https://kpi.ua/code>.

# Types of control and rating system for assessing learning outcomes

Current control: work on a practical lesson; preparation of procedural documents; implementation of MCR; performance of written tasks of independent work. The current control is reflected in the student rating. This rating is formed on the basis of points received by the student for work during the semester.

Calendar control: conducted twice a semester as a monitoring of the current state of compliance with the requirements of the syllabus, according to the schedule established by the university. provides an intermediate summing up of the discipline; The condition for successful completion of the calendar control is that students gain 50% of the points possible on the date of the calendar control.

Semester control: credit. Carried out based on the results of current control (if the student's rating on the results of work during the semester is 60 or more points) or performance of test work (if the student's rating on the results of work during the semester is less than 60 points and such student is admitted to semester control)

The student's rating consists of the corresponding points, which he receives for:

1. Work on a practical lesson
2. Preparation of procedural documents within the discipline
3. Execution of control (modular) work
4. Execution of tasks of independent work

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| № | Evaluation control measure | % | Weight score | Number | Total |
| 1. | Work on practical classes | 22 | 2 | 11 | 22 |
|  | Preparation of procedural documents within the discipline | 28 | 4 | 7 | 28 |
| 2. | Execution of control (modular) work | 30 | 30 | 1 | 30 |
| 3. | Performing tasks of independent work. | 20 | 20 | 1 | 20 |

System of rating (weight) points and evaluation criteria:

1. *Answer to the practical lesson (max - 22 points):*

Answers:

Weight point -2 points, the maximum number of points in all seminars is 22 points (2 points × 11 practical classes, which cover the topics of the discipline), where:

2 points - "excellent" - the student demonstrates a strong knowledge of the material in a given amount, gives a reasonable answer; may allow minor inaccuracies.

1 point - "satisfactory" - the student has mastered the basic theoretical material, but admits significant inaccuracies, can not properly answer clarifying questions.

0 points - "unsatisfactory" - the student gives the answer in essence; extremely limited response.

1. *Preparation of procedural documents within the discipline (max - 28 points)*

7 procedural documents × 4 points = 28 points.

4 points - the procedural document meets the requirements for form and content; is logical and reasonable;

3 points - to the procedural document there are insignificant remarks on its registration and / or validity;

2 points - in the procedural document there is a violation of the requirements for form and / or content; substantiation of claims is insufficient, however in general the document can be submitted to court;

0 points - the submitted procedural document cannot be submitted to the commercial court

1. *Execution of control (modular) work (max - 30 points):*

The student performs 30 test tasks. For each correct answer receives 1 point.

1. *Execution of tasks of independent work (max - 20 points):*

* tasks are performed in full (91-100%), in accordance with current legislation - 19-20 points;
* tasks are performed in full, but with minor shortcomings or 75-90% of tasks are performed in accordance with current legislation without errors - 16-18 points;
* tasks are performed with errors (not less than 60% of tasks) or 60-74% of tasks are performed in accordance with current legislation without errors - 15-12 points
* Less than 60% of completed tasks or gross errors in most completed tasks - 0 points (work is not credited).

Preliminary rating from the credit module must be at least 40 points, otherwise the student is not allowed to credit.

Students who score less than 60 points in the credit module during the semester are required to complete a test.

Students who scored 60 or more points during the semester have the opportunity to:

1) get a credit score (credit) "automatically" in accordance with the rating.

In order for a student to receive grades (traditional and ECTS), his / her grade is translated according to the table:

|  |  |  |  |
| --- | --- | --- | --- |
| The value of the rating from the credit module |  | Rating ECTS | Traditional assessment |
| Final rating |
| 0,95 R≤RD | 95-100 | А | perfectly |
| 0,85 R≤RD<0,95 R | 85-94 | В | fine |
| 0,75 R≤RD<0,85 R | 75-84 | С | fine |
| 0,65 R≤RD<0,75 R | 65-74 | D | satisfactorily |
| 0,6 R≤RD<0,65 R | 60-64 | Е – meets the minimum criteria | satisfactorily |
| RD<0,6 R | < 60 | Fx – unsatisfactorily | not credited |
| RD<0,4 R | < 40 | F – unsatisfactory (additional work required) | not allowed |

2) perform test control work in order to increase the score.

In case of receiving a grade that is higher than the grade "automatic" from the rating, the student receives a grade based on the results of the test.

In case of receiving a grade that is lower than the grade "automatic" from the rating, the previous rating of the student in the discipline is canceled (canceled) and he receives a grade only on the results of the test.

# Additional information on the discipline (educational component)

***Addition 1***

questions for the test

1. Principles of justice in commercial courts of Ukraine.
2. Characteristics of the principle of publicity of the trial.
3. The essence of the principle of proportionality, adversarial proceedings and equality in litigation.
4. Sources of economic procedural law.
5. The practice of the ECtHR in commercial litigation
6. Forms of commercial litigation
7. The concept of insignificant cases
8. Subject and subject jurisdiction of the commercial court
9. Instance jurisdiction of the commercial court. Organizational system of commercial courts of Ukraine.
10. Territorial jurisdiction of the commercial court.
11. Exclusive jurisdiction of commercial disputes
12. Alternative jurisdiction of commercial disputes
13. The composition of the court. Judge's dismissal: grounds and procedure
14. Participants in the case: composition and their rights and responsibilities
15. Representatives in the economic process
16. Third parties as participants in litigation. Types and procedural status of third parties.
17. Grounds and procedure for participation of the prosecutor in the economic process
18. Other participants in the trial: composition and their rights and responsibilities
19. The concept and types of evidence. The concept of proof
20. General requirements for evidence
21. Characteristics of physical and written evidence in the economic process
22. Characteristics and requirements for the testimony of witnesses to the economic process
23. Survey in the economic process, the order of its implementation
24. Procedure and grounds for requesting evidence
25. Procedure, grounds and methods of providing evidence
26. Types and procedure for calculating procedural deadlines
27. The composition of court costs and the order of their distribution between the parties
28. Ensuring court costs
29. Court fees. The procedure and amount of payment of court fees.
30. Refund of court fees. Postponement and installment payment of court fees and reduction of its amount or exemption from its payment.
31. The concept and procedure for order proceedings
32. Requirements to the statement of claim. Mandatory appendices to the statement of claim.
33. Types and requirements for statements on the merits.
34. Types and requirements for statements on procedural issues
35. Settlement of a dispute with the participation of a judge
36. Procedure for joining claims.
37. Grounds for leaving the statement of claim without consideration
38. Grounds for suspension of the proceedings
39. Grounds for closing the proceedings
40. The procedure for litigation
41. Procedure for conducting simplified claim proceedings
42. The procedure and consequences of the plaintiff's waiver of the claim
43. Judgments: types, procedure for entry into force and procedure for their service
44. Procedure and term for consideration of the appeal
45. Limits of review of the case in the court of appeal
46. Powers of the appellate court
47. The procedure for filing a cassation appeal, the grounds and time limit for a cassation appeal
48. Powers of the court of cassation
49. Limits of consideration of the case by the court of cassation
50. Binding of the instructions contained in the decision of the court of cassation
51. Grounds for review of court decisions based on newly discovered circumstances
52. Grounds for review of court decisions in exceptional circumstances
53. Procedure for appealing court decisions for execution
54. Grounds for suspension of execution of a court decision
55. Grounds for turning the execution of the decision, resolution
56. Judicial control over the execution of court decisions
57. Restoration of lost court proceedings by the commercial court
58. Proceedings in cases involving foreign persons
59. Arbitration of commercial disputes. The decision of the arbitral tribunal and the procedure for its execution. Procedure for appealing against decisions of arbitration courts
60. International commercial arbitration as an arbitral tribunal. Legal nature of the arbitration agreement.

***Addition 2***

*Example of test tasks:*

1. The Commercial Court, having established before making a decision that the statement of claim was filed not against the person who must be responsible for this statement, may, with the consent of the plaintiff, without terminating the proceedings:

a) allow the replacement of the original defendant by a proper defendant;

b) appoint an examination;

c) demand evidence;

d) suspend the proceedings.

2. Legal costs do not include:

a) state duty;

b) the amounts payable for the forensic examination;

c) lawyer's services;

d) services of a court administrator.

**Work program of the discipline (syllabus):**

**Compiled** by Associate Professor of Economic and Administrative Law, Doctor of Law, Associate Professor, Bevz S.I.

**Approved** by the department \_\_\_\_\_\_\_\_\_\_ (protocol № \_\_\_ from \_\_\_\_\_\_\_\_\_\_\_\_)

**Approved** by the Methodical Commission of the faculty (protocol № \_\_ from \_\_\_\_\_\_\_)