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The basic political institutions and functions of the state have been researched. The role of law in the regulation of social relations has been studied. A brief characteristic of basic branches of law has been given. The law sources and the elements of the legislation system of Ukraine have been classified. The basics of legal regulation of civil, family, labor relations and ways to protect them have been presented. Each theme is followed by test questions for self-assessment and a practical task.

For students of subject area 0306 "Management and Administration", postgraduate students and university lecturers.

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Introduction

The person who wants to be a worthy citizen of an independent democratic state, has to master the achievements of the world and national legal culture, learn legal protection means of universally accepted social values and their constitutional rights. For this process, it is necessary to form a high level of legal awareness and legal culture of Ukrainian society and each individual. The general usefulness of this knowledge increases significantly during the social reconstruction of society, its new economic and political orientations in connection with the integration of Ukraine into the European and world community.

The textbook "Law" provides a systematic presentation of the most important principles of the modern theory of law, characteristic of certain branches of law in Ukraine. The authors of the textbook have submitted the material contained in the Basic Law of Ukraine and new legislation, based on a wide range of modern legal literature sources. Each theme is accompanied by questions for self-assessment and practical tasks for independent testing of students' knowledge. The bibliography contains a number of sources, scientific and educational publications.

The purpose of the academic discipline is to give systematized scientific knowledge of the basics of the theory of law and other branches of law and, on this basis, to provide the formation of the elements of the legal culture, legal guidelines and lawful behavior of students in society.

Studying the academic discipline "Law" implies the execution of the following ***tasks:***

firstly, learning the specific professional terminology and forming a competent professional legal language as an important component of the legal culture of a future specialist that will allow further exploring other legal sciences on a higher level;

secondly, the development of logical thinking, the ability to support their own position, development of creative inclinations of students;

thirdly, understanding the main principles of the branch legislation aimed at the regulation of personal rights and duties of citizens.

The object of the academic discipline is a complex set of social relations that form in the process of activity of subjects of law in various spheres of life.

The subject of the academic discipline is learning the state-legal reality, namely the regularities of law, the regulatory and legal content of the legal norm, legal tools, means and techniques of legal work and so on.

In order to best learn the material, students need to start with learning disciplines that help to acquire knowledge and skills in the field of the General Economic Theory, the History of Ukraine, and the History of Economic Thought.

After studying the academic discipline "Law" students should:

know:

the basic principles and sources of law, the effective provisions of the Constitution and legislation of Ukraine;

how to determine the scope of operation of normative legal acts in time, in space and by the number of people;

the perspectives and main lines of development of Ukraine and other countries' legislation;

***be able*:**

to correctly interpret and apply legal norms in the process of work in their speciality;

to support their own point of view and make decisions on specific matters of regulation of legal relations, to give them a legal assessment.

An essential element of successful learning of the material of the academic discipline is independent work of students on studying the legislative literature, normative and legal acts.

In the process of teaching the academic discipline basic attention is paid to students' getting professional competences presented in Table 2.1.

Table 2.1

Professional competences which students get having mastered the academic discipline "Law"

Competence code	Competence name	Competence constituents
Law 1	The ability to find, analyze, classify and use normative legal acts	The ability to find sources of law
		The ability to use, apply sources of law
		The ability to classify normative and legal acts
		The ability to determine the constituents of the legislation system of Ukraine

1. The basics of the state theory

1.1. The basic theories of the state and law origin

Human society has a long history. In terms of the theory of law, the term "society" means a social organism, part of nature, consisting of people who constantly carry out their activities to improve the tools and methods of production. Moreover, according to most scientists, social development of society began without its political organization. That is, in the era of primitive society for a long period of time, people lived without having any idea of the state and law.

The main causes of the appearance of the state are:

- three great divisions of labor;
- emergence of the family, private property, creation of excessive product and appearance of the property inequality between different individuals;
- appearance of classes as large groups of people with their specific interests, and the emergence of interclass conflict;
- inability of public authorities to regulate primitive society class contradictions and conflicts.

Thus, the state emerged because of necessity of managing the social processes.

Currently, there are various theories of the origin of the state in jurisprudence. The main ones include:

- **theological** theory. In accordance with this theory the main cause of the emergence of the state is God's will;
- **patriarchal** theory, which is based on the assertion that the state is a result of the historical development of the family, and the power manager (monarch) – a natural extension of parental authority in the family (patriarch);
- **organic** theory. According to representatives of this doctrine, the state is an organism, a permanent relationship between the parts which are similar to the constant relationship between the parts of a living organism (being);
- **contract** theory explains the emergence of the state as a result of a voluntary agreement between people that someone manages, and others – who carry out management decisions;

- **psychological** theory which explains the origin of the state by specifics of the human mind (psyche), in which supposedly it is inherent to obey the leader who could manage society;
- theory of **violence** which associates the appearance of the state with the results of the conquest of one people by another;
- **space** theory which explains the origin of the state by other civilizations having brought political organization of society from space to our planet;
- **materialist** theory which has been most completely covered in domestic legal literature. It explains the essence of the state as an institution that aims to ensure the existence of society in the struggle of encountered antagonistic classes [38, p. 6].

1.2. The concept of the state, its features and functions

The term "state" is interpreted differently in legal and other scientific literature. It is considered in the attributive, institutional, substantial and international meanings.

In the attributive meaning the state is a certain system of social relations, the official system of a particular society, its formalization.

In the institutional meaning the state is the apparatus of public authorities, public and legal authorities exercising the state power.

In the substantial sense the state is population organized in a certain corporation that operates in space and time.

In the international meaning the state is the subject of international relations, as a unity of territory, population and public authorities [101].

Thus, the **state** is a comprehensive, sovereign, political and territorial organization of society that ensures its existence as a unit in a class society, which has special management personnel and coercion, is capable of making its orders compulsory for those to whom they are addressed with the help of law, as well as managing public affairs on behalf of the entire population. That is a mechanism of society management.

The main features of the state include:

1) sovereignty;
2) territorial settlement of the population;
3) the presence of management personnel and apparatus of coercion (enforcement);

4) the ability to issue compulsory rules of law (maxims), to collect taxes, receive and grant loans (credits);

5) the opportunity to express and defend the interests of a particular population;

6) a monetary system.

Let's consider some of these features. The *sovereignty of the state* is the rule, independence, completeness, unity and indivisibility of the state government within its territory and independence and equality in the country's foreign relations.

Population of the state settles throughout its territory, which is usually divided into administrative units. The political power of the state and its sovereignty extend to all persons living in its territory.

The state establishes *compulsory rules* of conduct for the entire population and fixes them in the law.

In socially heterogeneous society, the state expresses and defends the interests of a certain part of the population but the political authority is separated from civil society and relatively detached from it. That is state is an organization of political public authority (power). This authority officially manages the affairs of the whole society and acts on behalf of the entire population.

To fulfill its tasks the state has a *special mechanism* – a system of legislative, judicial and control authorities (bodies), as well as enterprises, institutions and other state-owned organizations.

For maintaining organizations of the state mechanism, which doesn't render paid services and produce material goods, *the state collects taxes and other mandatory payments*.

Each state has its own *financial and monetary system* and currency, which are necessary for the proper functioning and development of society and its citizens.

The state attributes typically include: the anthem, the emblem, anniversaries and more. Their main purpose is to give an opportunity to clearly and easily identify any state by its external features [102].

The state realizes its role in the political organization of society through its **functions**. The word "function" is translated from Latin as "accomplishment", "performance". More generally the function is the responsibility, the role fulfilled by certain institutions, characteristic of directions and aspects of its activities.

Therefore, the ***functions of the state*** are the main directions of its activities, in which the purpose and objectives of the state are displayed and specified, its nature and purpose in socially heterogeneous society are revealed.

State functions can be classified according to the following criteria:

1) depending on the social importance – basic and non-basic;

2) depending on the territorial orientation – internal and external;

3) depending on the time of operation – permanent and temporary;

4) depending on the spheres of social activity – political, economic, humanitarian, etc.

Basic functions represent the most common and most important complex directions of activity of the state to achieve the strategic objectives facing state at a particular historical period. These are the functions of defense; support of international relations; public safety; informational, economic, ecological, cultural, educational, and others.

Non-basic functions characterize the directions of activities of the state of implementation of specific tasks in all areas of everyday social life. This category includes the functions of personnel management; logistics and property management; functions of the budget process and accounting; provision of public authorities with information and others.

The internal functions include those directions of activity of the state in which the internal policy with respect to their economic, cultural and other aspects of life of society are specified. There are such internal functions as social services for the population; support of law and order; health care, economic, taxing and financial control, social, ecological, cultural, informational and others.

External functions determine the main directions of the state of development and maintenance of relationships with other countries, international non-governmental organizations and international community as a whole. These functions include the protection of state sovereignty, defense of the country; peacekeeping and the struggle for peaceful coexistence of states with different political regimes and forms of government; cooperation with other countries in meeting global challenges.

Permanent functions determine the direction of activity of the state, carried out at all stages of its development.

Temporary functions include the state duties of solving specific problems arising at each stage of social development.

1.3. Classification of states

Like any social structure, the state has a certain structure and internal organization. In other words, the realization of state power is possible on the basis of specific forms of polity and methods of governance.

The form of the state *is the way of organization and implementation of state power which is characterized by a certain structure, territorial organization and methods of governance.*

The elements which characterize the form of the state are:

- polity (state structure),
- form of government,
- political regime.

1. **The polity** (**state structure)** is a way of division of the state into certain component parts, and principles of division of powers between central authorities and authorities of components (regional).

Depending on the type of polity, states are classified into *simple (unitary)* and *complex (federations, confederations, empires).*

A **unitary** state completely (or mostly) consists of those parts, which haven't most of the attributes of statehood and they are only administrative-territorial units. However, the unitary form of government does not exclude the possibility of including certain autonomous entities (subjects) in its composition with some signs of independence (e.g. the Crimea in Ukraine).

A **federal** state consists of individual parts that have some elements of sovereignty. Of course, the subjects of the federation, equal in rights, have their own representative government bodies and, in fact, the administrative and territorial division. In such states there is a double legal system – at the federal and regional levels. However, the rules of federal law have an advantage (precedence) over the law of the individual parts of the state. A classic example of the federal state is the United States, consisting of 50 states and the District of Columbia.

A **confederate** state is a voluntary association of sovereign states, which remain independent, but have common bodies for solving specific tasks. As evidenced by historical experience this form of association is very unstable and decays with time or is usually transformed into a federation. (Note the fundamental difference of confederations from other regional or corporate voluntary unions of sovereign states (international organizations), such as the League of Arab States, the Organization of Petroleum Exporting Countries etc.).

As a rule, the bodies of international organizations are advisory and make decisions which are not required to be performed by the sovereign states that make up such voluntary associations.

An ***empire*** is a complex forcibly created colony state, which consists of a main state and the individual parts that completely depend on it and are forcibly kept in its composition.

2. The **form of government** should be understood as the organization of the supreme government, the manner of its formation and activity, competence and interconnection of its bodies, as well as the relationship with the country's population. Traditional forms of government are: Monarchy and Republic.

A **monarchy** is a form of government in which sovereignty is actually or nominally embodied in a single individual (monarch, king, shah, etc.) (from the word "mono" – one). The monarchy can be *absolute and limited.* When the monarch has no or few legal restraints in state and political matters, it is called an *absolute monarchy* and is a form of *autocracy*. Forms in which the monarch's discretion is formally limited (most common today) are called *constitutional monarchies.* In a limited (constitutional, parliamentary) monarchy the monarch is only a certain part of the powers; and functions of most of the government are performed by other bodies (parliament, cabinet of ministers, judges). Monarchy was the most common form of government until the 19th century, but it is no longer prevalent. Now it is usually a constitutional monarchy, in which the monarch retains a unique legal and ceremonial role, but exercises limited or no political power.

A **republic** is a form of government where the supreme power in the country belongs to the elected representative bodies and the head of state, elected by the whole population or part of it.

There are three kinds of republics: presidential, parliamentary and "mixed" semipresidential systems (presidential-parliamentary and parliamentary-presidential).

In presidential republics:

president is usually elected popularly;

president is the Head of State and exercises executive power;

legislative power is vested in the executive body (Parliament);

president has the power to veto laws passed by parliament and has the right to dissolve parliament, but could be ousted by a special procedure (impeachment).

In parliamentary republics:

president is elected by Parliament;

government is formed by the representatives of the parties that have a majority in Parliament and is accountable to Parliament;

parliament may express no confidence in the government, which automatically leads to its resignation;

president under certain circumstances may dissolve parliament and appoint new elections.

In a **mixed** (presidential-parliamentary and parliamentary presidential) republic in varying degrees, there are elements of both presidential and parliamentary forms of government (such as in Ukraine).

3. The **political regime** characterizes the manner in which state power is realized through some means, methods and techniques (expedients). There are the following types of political regimes: democratic, liberal, totalitarian and authoritarian.

The *democratic political* system is characterized by the realization of fundamental human rights, a high degree of political freedom, real participation of the population in realization of state power, provision of legal opportunities for free expression and consideration of the interests of all groups and classes of society through democratic institutions (referendums and elections).

The *liberal political regime* is characterized by large political freedom, but only a few groups can use it because of the economic, cultural and legal backwardness of society; so in order to achieve social goals, the state has to resort to coercive forms of influence on people.

The *totalitarian regime* is a complex of ways and means of government where all vital activity of society and every citizen are completely regulated: the government is formed closely by one or more persons from the establishment ("nomenklatura") and is not controlled by the population, there are no legal mechanisms for free expression of the will of citizens; the interests of certain groups in society are not taken into account; there is usually a one-party system, only one dominating ideology with any deviation from it being immediately eliminated; government interference in private life of people is common.

The *authoritarian regime* is a complex of tools and methods of government completely concentrated in the hands of the ruling elite. In this regime a

legal opposition is not allowed; elections, referendums, the activities of public associations are formal and controlled by the government; if polarization of political forces becomes antagonistic, the mechanism of the effect of reactionary laws is carried out or direct violence is applied. A variation of an authoritarian regime is a military dictatorship.

1.4. The state mechanism and the state apparatus

To carry out its functions and solve problems, each state creates various organizations, which make a complex of state mechanism.

The **state mechanism** is:

state-owned enterprises;

government agencies and other government organizations;

the apparatus of the state.

State-owned enterprises directly perform the functions and head state provision of material production, in particular, fulfill government orders for production of goods, rendering services, logistics of intangible field governmental organizations.

Government agencies and organizations ensure the performance of state functions in the nonmaterial production. These include organizations and institutions of culture, protection of health, science and education.

The ***apparatus of the state*** is the system of all government bodies which solve certain problems and perform certain public functions. Therefore, together with general functions of the state many authors also distinguish the functions of separate state bodies and their officials. By exercising certain functions public authorities should:

take into consideration objective laws of development of society and follow these laws in everyday life;

stimulate social activity of an individual and citizens, pay attention to the economic, social and cultural self-determination of a person;

take into account the interests of different social groups and associations of people, specific individuals, determine their needs and facilitate meeting these interests and needs;

direct their activities to serving the public without interfering in personal affairs of individuals if it does not go beyond the constitutional regulation of social relations.

The basic principles of the state apparatus of Ukraine is democratism; national equality; sovereignty; social justice; humanism and compassion; combination of persuasion and coercion; transparency, openness and taking into account public opinion, the separation of powers.

The primary cell of the apparatus of the state is a state body, which is a separate officer or staff of civil servants endowed with power and appropriate logistical means, legally established for solving specific tasks and performing certain public functions.

State features and functions of public bodies should be distinguished from the forms and methods of fulfilment. The forms of fulfilment of state functions are legislation, administration, judiciary, law enforcement. The methods of performance of state functions include conviction, encouragement and coercion. Each state function can be implemented in various forms and by various methods.

Questions for self-assessment

1. What are the elements of the concept of the form of the state?
2. What features of monarchy and republic do you know?
3. What distinguishes the democratic regime from the antidemocratic one?
6. Describe the form of the state of Ukraine.

The practical task

Aristotle in his book "Politics" wrote that the state was the highest form of human interaction which covered all other forms of communication and that the state arose out of the need of life to achieve certain good. However, in the process of the state development, it goes, according to the philosopher, through several stages which are identified with the stages of social association and committed by men in their natural desire to communicate.

The first stage is the family consisting of a man, a woman and children. Next is a large (extended) family, which combines several generations of blood relatives with side branches of the family delimitation. The next stage is a village or settlement, and eventually – a polis. The polis, according to Aristotle, is the highest form of bringing people together, which covers all other forms.

What state origin theory is Aristotle a representative of?

2. The general concept of law

2.1. The basic meanings of the term "law"

Every society has to regulate relations between people, provide control and protection of these relations. Such regulation and protection of social relations are carried out through social norms. In the system of such rules law occupies a leading position. In legal literature, law is considered a general social phenomenon and an expression of the state will (legal law).

The term "law" is used in different meanings. The basic meanings are:

1) a rule of conduct or procedure established by custom, agreement, or authority. It can be any written or positive rule or collection of rules prescribed under the authority of the state or nation, as by the people in its constitution;

2) a complex of rules or principles dealing with a specific area of a legal system: tax law; commercial law; criminal law. The body of such rules is concerned with a particular subject or derived from a particular source;

3) the principles and regulations established in a community by some authority and applicable to its people, whether in the form of legislation or of custom and policies recognized and enforced by judicial decision; a judicially established legal requirement; a precedent;

4) the area of knowledge concerned with these rules; jurisprudence: the science of law;

5) the controlling influence of such rules; the condition of society brought about by observance of these rules: maintaining law and order;

6) a statement describing a relationship observed to be invariable between or among phenomena for all cases in which the specified conditions are met: the law of gravity.

7) a generalization based on consistent experience or results: the law of supply and demand [104; 105].

But not in all of these examples, the term "law" has a legal meaning.

In modern legal literature of recent years the term "law" is used in such meanings as:

- law as a system of legal norms (a consequence of state activity, the embodiment of the will of the state). The law is objective because state obligatory rules of behavior exist regardless of will and consciousness of certain subjects (participants in social life);
- law as a normative legal act of the highest legal force which enacts in special order by legislative body or referendum and regulates the most

important social relations (for instance, the Constitution of Ukraine is the fundamental law of Ukraine, laws and other normative legal acts are adopted on the basis of the Constitution of Ukraine).

2.2. Law as an objective category, its concept and relation to other main types of social norms

The legal system of all legal precepts established (sanctioned), protected, defended by the state, which have a compulsory nature, are a criterion of lawful or unlawful behavior and exist independently of individual consciousness of the subject of law, is called the *legal objective law*.

Law is a kind of social norms. All social relations are obedient to such special rules of behavior (although people are not always fully aware of this).

Social norms are human co-living rules governing relations between people. Their distinctive features are:

1) social norms are a model (sample) of human behavior. They are aimed at regulating all public relations;

2) social norms have a general character, that is they are intended for repeated use;

3) keeping to social norms is provided by some means: inner conviction of man, stigmatization, state coercion.

There are the following types of social norms:

1) **moral norms** (ethical standards) which are relatively stable people's ideas about right and wrong, justice and injustice. Morality evaluates human behavior through the concepts "good" and "bad". Moral norms, as a rule, are not fixed documentally, they exist as moral reference points in people's consciousness. For example, it is clear that lying is bad;

2) **norms of law** which are generally binding, formally defined, established or authorized by the state rules of conduct which are ensured by its coercive power. For example, one of the legal norms prescribes that citizens of Ukraine submit an annual income tax return;

3) **religious norms** are rules of behavior of believers which have developed on the basis of ideas about God and behavior that pleases Him. This group of social norms is fixed in the sacred books of the Christians, Jews, Muslims, Buddhists – the Bible, the Torah, the Koran, the Vedas, in the oral tradition. Norms regulate the relations of religion believers within the church or other religious organizations. For instance, the religious norms

include the duty of the Orthodox Christian to fast, the duty of a Muslim to pray five times a day;

4) **corporate norms** (norms of civic associations) are norms of associations of citizens, including labor unions, employers' unions. Basically they fix the order of formation of corporations, the rights and obligations of their members, for example, the Charter of the Christian Democratic Party of Ukraine, the Charter of the Odessa National Academy of Law;

5) **customs and traditions** are rules of conduct which are spontaneously formed, handed down from generation to generation. Such, for example, are the custom of shaking hands at a meeting, the tradition of meeting the New Year;

6) **aesthetic standards** are relatively changeable people's ideas about the beautiful and ugly. These rules are often not followed by people consciously (the choice of clothing, demeanor).

The observance of the majority of social norms is not provided by the state but by public condemnation, sanctions on the part of citizens' associations and churches (e.g. expulsion from the party, repentance or excommunication).

The state provides only the legal norms. Being kind of social norm, the legal norm has all attributes of these rules (regulatory, normative, providing security) and at the same time is different from them in specific properties. Firstly, formation and operation of law is closely related to state activity. State gives an obligatory character and coercive force to the legal norm. Secondly, violation of the law, as a result, has a negative reaction in the form of state legal liability. For example, a measure of legal responsibility can be imprisonment, property claims, etc. Thirdly, an effect of the rule of law applies to all people. For example, the rules of the Orthodox Church are valid only in respect to its parishioners; the charter of political parties is binding on its members only.

Moral and legal norms are the main regulators of human behavior. The unity of law and morality is that:

1) they are **systems of social norms**;

2) they pursue the same **goals** – the ordering of social relations, the assertion of liberty, equality, humanism and justice;

3) **provisions** of legal and moral norms are largely **coincident**. Legal and moral norms prohibit or encourage the same behavioral acts;

4) legal and moral norms **are addressed** to the same group of persons;

5) they act as fundamental social **values**, indicators of social and cultural progress of society.

Law and morality are distinguished by:

- the *ways of establishing*. Legal norms are established by the state, while moral norms are set spontaneously. Moral norms have informal character;
- *the methods of providing them*. Law is ensured and protected by the state, which monitors the observance of the norms and punishes those who violate them, while moral norms are based on the power of public opinion;
- the *form of expression*. Legal norms are fixed in the acts of the state, while moral norms arise and exist in people's minds;
- the *evaluation concept*. In the assessment of people's behavior the legal norm uses the terms "legally" or "illegally", "legal and illegal", "punishable" and "with impunity", while the moral norm assesses the human actions from the perspective of good and evil, justice and injustice, conscience, honor, duty;
- the *different nature of liability* for violation of the norms and a *different procedure for realization* of responsibility. For legal norms it is legal responsibility, for breeching moral norms it is boycott, contempt, public condemnation (moral forms of influence).
- the *sphere of action.* Moral norms regulate interpersonal relationships, while legal norms also regulate ownership relations, labor, management, justice.

Moral and legal norms are mutually reinforcing. Laws increase in force hundredfold if they do not only rely on the power, but also on public morality.

2.3. The main features of law

Law *is a system of obligatory rules (rules of conduct) established or recognized by the state as a regulator of social relations which express general interests (the will) of the population, are provided with all the legal measures of state influence up to coercion.*

The main features of law are:

1. **Systemacity** which means that law is not just a complex of principles and norms, but their system, where all elements are connected and coordinated. Systemacity is introduced into the law by legislation.

2. **General obligatoriness** of law is expressed in the fact that the rules of behavior are common and compulsory for the whole country. General obligatoriness, generality of law is given to the law by the fact that interests of the participants of regulated relations are expressed in it, that law has a normative character.

3. **Formal definition** of law means clarity, uniqueness, conciseness of formal legal requirements expressed in the laws, decrees, regulations, etc. This is achieved through legal notions, their definitions, rules of legal technique. That is why the subjects of law clearly know the boundaries of lawful and unlawful conduct, their rights, freedoms, responsibilities, type of responsibility for the offense. Expression of legal norms in laws, other regulations, the establishment of formal equality is the main feature of the formal definition of law. Legal provisions are usually stated in writing, they have a clear logical structure. Law imposes certain limits of human behavior, clearly articulating their rights and obligations.

4. **It is provided by possibility of state coercion.** Law is guaranteed by state up to coercion. This indicates that state power, the state as a whole supports the general rules which are recognized by the state as legal. Not all rules of law are respected and implemented voluntarily by internal beliefs. Many people obey requirements of the legal regulations only because state stands behind the law. State protection of legal rules includes state legal coercion, various organizational, administrative and technical, educational and preventive measures of state bodies for making citizens obey legal norms. Violators of requirements of the law are subject to measures of legal liability – disciplinary, administrative, and criminal – applied by the competent public authorities. Thus, the state provides a universal obligatoriness of the law.

5. **Will nature** of law, expression of public, group and individual interests in law means that the will, the content of which is interest, is manifested and embodied in law. Law accumulates social, group and individual will of the citizens in their harmonious combination, agreement and compromises. Understanding of will excludes the law as an instrument of violence of the state, a means of suppression of individual will. It creates the illusion that the law comes from the state. In fact, state through its legislative bodies, "inputs in the law" public, group and individual interests, consistent with the principles of justice, freedom, democracy, equality, humanism.

Scientists also define others features of law, such as: normativity, universality, connection with state and others.

The main directions of the influence of law on man and society are covered by the concept of the function of law. They highlight such kinds of law functions as:

- regulatory (providing a positive legal influence aiming to order social relations by the establishment of prohibitions, permissions etc.);
- protection (provided by state bodies which enact decisions and guaranteed by state compulsion);
- educational (designed to educate with respect to the law with the help of quality of laws, their fair content);
- informational (law informs people about legislator's will);
- estimative (law serves as a criterion of legitimacy or unlawfulness of the actions).

2.4. Connection between the law and state

The current literature indicates three models (approaches) of relations between the state and the law:

totalitarian (the state is above the law and they are not connected);

liberal (the law is above the state);

pragmatic (the state supports and strengthens the power of the law, but is connected to it).

The *totalitarian* model assumes that the law is a product of government activity, a consequence of the state. In domestic legal literature, until recently, it was thought that law is subordinated to the state. However for modern times this approach is no longer suitable.

The *liberal* approach. From the viewpoint of this approach law has absolute priority in comparison with the state. This liberal approach has certain advantages. It is a philosophical platform for approval of the ideas of the rule of law in political practice. But this idea is expressed as desirable rather than factual.

The *pragmatic* approach. Under this approach connection between the law and the state does not have such a monosemantic character (the state produces the law or vice versa). The connection seems more complicated, having the character of the bilateral relationship: the law and the state cannot exist without each other and therefore, there is a functional connection between them.

Based on the pragmatic model of relationship between the state and the law, let's focus on three of its main aspects:

unity;

difference;

interaction.

The correlation of the law and the state is shown in:

1) **the unity of law and state***.* It manifests itself in the fact that the law and the state are an instrument of social regulation due to which they have a common typology, origin, equally related to economic, spiritual, cultural and other aspects of society, complementing each other in fulfilling its social purpose;

2) **the difference between state and law** which is seen in the different social purpose, structure and content, in the form of state and law. This is due to the fact that the state's role in society is to establish and ensure a certain order, while the role of law is to create a legal mechanism for the implementation of this order;

3) **the interaction of state and law***.* The interaction of state and law is manifested in the presence of various forms of influence of the state and law on each other. The law is formed and provided by the state. The state is formed through the law, namely its internal organization, form, structure; the main types and directions of the state activities are set based on the law; the tasks and functions of the state are implemented in compliance with the law;

4) **the conflict of state and law** which arises when state power goes out of control of society or law strives to limit the power of the state, preventing the arbitrariness of the state.

Questions for self-assessment

1. What features of law do you know?
2. What is the social purpose of law?
3. What are the differences between law and other kinds of social norms?
4. What functions of law do you know?

The practical task

In Afghanistan, after the seizure of power by the Islamic group "Taliban" many rules of Sharia law were introduced. Women were forbidden to work, go to school and go out without a veil. All civil servants were obliged to let their beards, and those who came to work shaved, were subject to dismissal.

What type of social norms does this example provide?

3. The norms of law

3.1. The concept and main features of the legal norm

The legal norm is a mandatory rule of conduct in society which is formed in accordance with the recognized (by society) fair measure of freedom and equality and which is formally defined (established or authorized) and provided by the state to regulate, protect and defend social relations. It should be mentioned that the natural rights are not always fixed in legal norms.

The features of the legal norm can be divided into social and legal ones.

The social features are as follows*:*

1) as for the inner content it is an example of relations in the society according to the objectively existing and socially recognized fair measure of freedom and equality;

2) it is a rule of behavior (permitted), which regulates relations between people, corrects their connections, gives them compromise and communicative nature;

3) it is derived from natural inalienable rights and freedoms, regardless of whether they are established in the Constitution and laws or not.

The legal features are as follows*:*

1) it is a legally meaningful **way of regulation and protection of specific social relations**. It introduces a new rule, fixes the most common social processes and relationships; impacts on social relations in order to overcome and prevent conflicts;

2) it **regulates** an unspecified number of **public relations**;

3) it has **no specific addressee** (is not personified), applies to everyone who becomes a party of relations regulated by norms; designed for multiplicity use under certain circumstances;

4) it is obligatory for members of the legal communication in which it is intended; serves as a guide to action, should not to be discussed;

5) it is formally defined by content – expressed in prescriptions of legal acts, legal agreements, legal practices, legal precedents, etc.;

6) it is **formed as the rights and obligations of participants** in relations and as a **legal liability** which can be applied in the case of noncompliance; designed to ensure that the recipients are able to foresee the consequences of their behavior;

7) the legal norm has **a defined structure** consisting of interrelated elements: a hypothesis, dispositions, sanctions; together with other norms it forms a system of law;

8) it is a result of the **power activity of the state** – established or authorized by it;

9) it is established **in strictly established order** issued by authorized entities within their jurisdiction and in accordance with certain procedures: development, discussion, adoption, enactment, changing or repealing of law;

10) it is **provided with all measures of state influence** up to enforcement. State creates real conditions for voluntary exercising of the patterns of behavior by subjects, which are formulated in the legal norm; it applies the means of persuasion, conviction, enforcement for desired behavior, particularly effective sanctions in the case of noncompliance with the legal norm.

3.2. The structure of the legal norm

As a primary element of the legal system, the legal norm is a system in miniature itself, i.e. it has a certain internal organization. In this microsystem each element has its own purpose. In accordance with its character the legal norm has the following logical expression of structure: "if – then – otherwise". Traditionally in science they highlight three elements of the norm – hypothesis, disposition and sanction (Fig.).

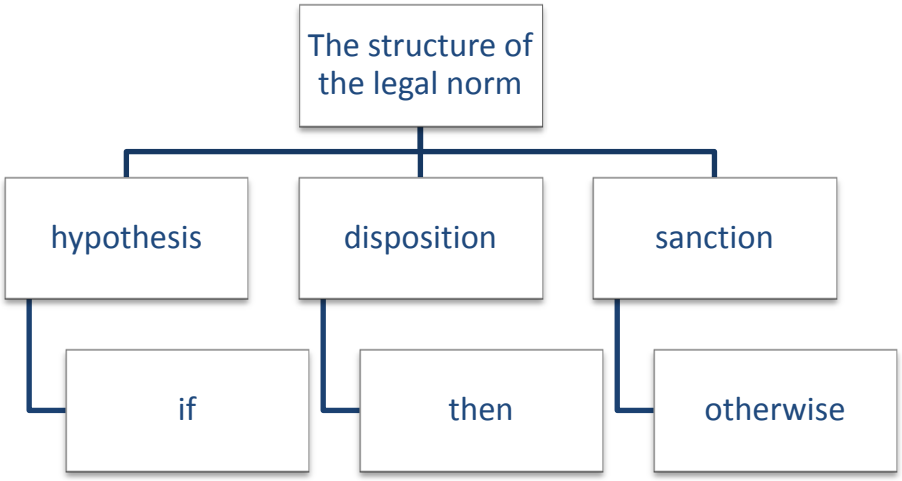

Fig. **The structure of the legal norm**

1) **hypothesis** (assumption) is part of the legal norm, which specifies conditions for the legal norm to enter into force. This part of the legal norm sets out the factual circumstances which give rise to legal rights and obligations of persons. It answers the questions: When? Where? In what case? Under what conditions?

2) **disposition** (order) is part of the legal norm, which contains a rule of conduct of entities which get into the condition specified in the hypothesis. It reveals the rule of conduct, as well as the content of the legal rights and obligations of persons;

3) **sanction** (penalty) is part of the legal norm providing the consequences of violation of the legal norm. The purpose of sanctions is to encourage actors to act in accordance with the requirements of the legal norm. The sanction indicates an incentive or punitive measures that should occur in the case if rules stated in the disposition are broken or complied with.

Here is an example of the legal norm with its elements: "If a lawyer in connection with the performance of their professional duties has come to know some preliminary investigation data (hypothesis), the lawyer shall not disclose them without the consent of the investigator or prosecutor (disposition), otherwise he or she will be guilty of disclosing the preliminary investigation data and thus become subject to liability in accordance with the applicable law (sanction)".

Not all the elements (hypothesis, disposition, sanction) are necessarily contained in the legal norm's structure. For example, the constitutional legal provisions usually have only a disposition in their structure, rarely they include a hypothesis and a disposition; in some cases they can include a sanction as well. The norms which provide an administrative liability, often don't contain a hypothesis in their structure. Sanction is neither a mandatory structural element of the administrative law.

3.3. Classification of the norms of law and their elements

In every state there are a huge number of the norms of law. These rules can be classified into types that meet specific criteria.

1. Depending on the functions of law, legal norms can be:

- regulative,
- protective,
- defensive.

1.1. **Regulative norms of law** are rules of conduct aiming to organize social relations by providing rights and imposing obligations on their members (the majority of legal rules). Designed for lawful behavior, these norms (most of them) are voluntary for observation.

Depending on the character of dispositions contained therein, regulative norms are divided into:

a) **permitting (empowering)** which give subjects an opportunity to commit certain actions; empower subjects with certain rights (to apply to court, receive a pension). In their texts, they contain, such words as: "can", "may", "has a right".

b) **binding**, which contain an order to commit some action for establishing a certain version of the required behavior (to give the required documents to the customs control). They contain the words: "must", "should".

c) **prohibiting** which consist of prohibitions against committing certain illegal acts. Their content is a requirement to refrain from negative behavior which is recognized as offense. The indications of the prohibiting disposition are the words: "forbidden", "doesn't have a right", "can", "not allowed".

1.2. **Protective (preventing) norms of law** are rules of behavior that determine conditions of applying preventive measures of state influence in conflict situations to the entity, as well as the nature and content of these measures in the case of the absence of offense – in the case of controversial circumstances which threaten the observation of regulative norms; while controlling the realization of the right by competent authorities, etc. (the norm about the detention of the subject as a suspect).

Designed for conflict situations, they have incriminating character or provide mental coercion or physical and mental compulsion (they are secondary norms regarding regulative norms).

1.3. **Defensive (recovery, compensation) norms of law** are rules of behavior that determine the state response to violations of social relations established in the norms; restoration of the legal status if damage is caused to the subjects of law, society, law and order; determine the conditions of applying public enforcement to the entity that committed the offense (provision of compensation for property damage, liability of a soldier because of breaking the norm of the Disciplinary Rules).

Designed for misconduct, they are defensive in nature, involve physical coercion (they are secondary standards regarding regulative and protective norms).

Protective and defensive norms are closely connected by their legal nature. While the subject of protective norms is violated right and duty, the subject of the defensive norms is violated or contested rights of the entity.

2. Depending on the subject of legal regulation, legal norms are divided into:

depending on the branch of law – norms of the constitutional law; administrative law; criminal law; civil law; labor law; ecology law, etc.;

depending on the institutions of law – norms of the Law of Succession; rules of administrative responsibility and so on.

3. Depending on the method of legal regulation, legal norms can be:

1) **imperative** – containing categorical imperative dictate of the state to implement clearly defined actions, to prevent any deviations from the exhaustive list of rights and duties of subjects. In other words imperative norms (binding and restrictive) directly point to the rules of conduct, have a completely defined rule (the citizen of Ukraine shall be deprived of his citizenship or the right to change it);

2) **dispositive** – establishing the variant of behavior, but allowing the parties of state-regulated relationships to determine the rights and obligations in individual cases by themselves. They fill the lack of agreement and act only if the parties of regulated relations did not set other rules themselves, have not agreed on some issue (recognized through the formulation: "if it is absent in any agreement", "unless otherwise provided in the contract", etc.). So dispositive norms provide freedom of choice of behavior (if the contract of sale does not provide installment payment, the buyer must pay the seller the price of the goods completely).

4. Depending on the nature of the psychological impact on the individual, legal norms can be:

1) **encouraging** – establishing the form and degree of encouragement for the approval of the variant of behavior by the state and public, that is honest and productive work (for example, rules of payment of premiums, giving orders). The peculiarity of these rules is that they do not define a rule of conduct, and give actors a certain freedom of choice, call for active lawful behavior, stimulate it;

2) **recommendational** – providing variants of behavior of the subjects of law desired by the state. These norms are specified in local legal acts for future implementation.

5. Depending on the subjects of rulemaking, there are legal norms of:

- government;
- head of state;
- executive bodies;
- local governments;
- enterprises, institutions,
- local communities and others.

6. Depending on the operation in space, legal norms are:

- **general** (effective in all the territory);
- **limited** (effective in the territory, for example, of the Autonomous Republic of Crimea);
- **local** (effective at some enterprise, organization, institution; such as university internal regulations).

7. Depending on the operation of norms throughout the time, legal norms are divided into:

- **permanent** (valid until their cancellation);
- **temporary** (with a certain term of action);
- **of retroactive action.**

8. Depending on the operation of the norms in respect of individuals, legal norms are:

- **general** (applicable to the entire population);
- **special** (applying to a certain range of people, such as refugees);
- **exceptional** (making exceptions to the general and special rules, such as norms for diplomats and consuls).

Let's consider different kinds of elements of the legal norm according to the current legislation.

1. **Hypotheses**, depending on their structures, may be:

- **simple** (one condition for observation of the legal norm) e.g. Provisions of labor contracts that violate the position of workers are invalid (Art. 9 of the Labor Code of Ukraine (LCU);
- **complex** (several conditions for observation of the legal norm) e.g. If upon completion of the dismissal notice period the employee failed to leave job and demands no termination of the labour contract, the owner or the body authorized by him/her shall not be entitled to dismiss him/her on the ground of the previously filed application (Art. 38 of the LCU).

2. Depending on the degree of certainty of the content, hypotheses are divided into:

- **absolutely certain** that exhaustively define the circumstances, the presence or absence of which causes the acting of the legal norm (e.g. When workers are sent to training, their workplaces are kept for them and payments established by law are made (Art. 122 of the LCU);
- **relatively defined**, which do not contain enough information about the circumstances of the action of the legal norm, limiting conditions for the

application of the legal norm by a range of formal requirements (e.g. If within one year from the date of imposition of a disciplinary sanction an employee was not subjected to another sanction, he is deemed to have had no disciplinary action (Art. 151 of the LCU);

- **alternative** that put the norm in dependence on one or more of the actual circumstances (e.g. Dismissal of employees from work by the owner or body authorized by him/her shall be allowed in the following cases: showing up to work intoxicated with alcohol, narcotics or other toxic substances; refusal or evasion of compulsory medical inspections, training, instruction and assessment of safety and fire protection knowledge (Art. 46 of the LCU).

Typically, **dispositions are** classified as follows:

1. Depending on the character of subjects' rights and responsibilities of the disposition they are divided into:

- **simple**, involving only one way of behavior (e.g. In the case of entering into a labour contract, the citizen is obliged to give a passport or other ID, a work record card, and a document about education in cases prescribed by legislation (Art. 24 of the LCU);
- **complex**, involving a number of behaviors (e.g. The buyer of defective goods can change them or return to the seller and get payment back).

2. Depending on the degree of certainty, the rights and duties of subjects are:

- **defined**, i.e. clearly defining the rights and obligations of parties to legal relations (e.g. The woman working and having two or more children under 15 years old, or a disabled child, or an adopted child, a single mother, a father bringing up a child without mother, as well as the person having taken the child under guardianship shall be granted the annual additional paid leave for the period of 7 calendar days without regard to official holidays and non-working days (Art. 182-1 of the LCU);
- **relatively defined** which contain general features of behavior within which actors can act (e.g. If an employee has not made a new violation of the labor discipline, punishment can be vacated within one year (Art. 151 of the LCU);
- **alternative** (uncertain) that points to several legal consequences, that suggest arising of one of them (e.g. Women having children aged from three to fourteen years or disabled children may not be engaged in overtime work or sent on business trips without their consent (Art. 177 of the LCU).

3. Depending on the nature of rights and responsibilities of the dispositions, they are classified as follows:

- **empowering**, giving the subjects an opportunity to commit positive acts, pointing to a possible variant of their, permitted behavior. Typically, the variants of permitted behaviors are defined by the words "can", "may", "has a right" (e.g. By consent of one of the parents or a person substituting thereof, persons who reached fifteen years of age may be employed in exceptional cases (Art. 188 of the LCU);
- **binding**, consisting of the order to commit some positive actions establishing a certain version of the required behavior for subjects. The terms "must", "should", "belong" are used as expressers of volitional behavior (e.g. The owner or an authorized body must conduct investigations and keep records of accidents at work (Art. 171 of the LCU);
- **prohibiting**, i.e. stopping certain illegal acts from being committed. Their content is a requirement to refrain from negative behavior which is recognized as offense. Indications of the presence of the prohibiting disposition are the words "forbidden", "no right", "can", "not allowed" (e.g. When entering into a labour contract it shall be prohibited to demand from persons who take employment to provide data on their party affiliation and nationality, origin, residence permit and documents which are not prescribed by legislation to be submitted (Art. 25 of the LCU).

4. Depending on the presence of connection with other elements of norms, they can be:

a) **conditional**, that occur under certain circumstances reflected in the hypothesis;

b) **unconditional**, that do not include the rights and obligations depending on the occurrence of certain business circumstances. The norms of the Constitution, which enshrines the right of everyone to life, don't have a hypothesis. It assumes the presence of certain traits and characteristics "of each person", seeing it as any man;

c) **protected**, with rights and obligations guaranteed by the negative consequences prescribed by the sanction of the norm;

d) **not protected**, which have no direct connection with the sanction of the norm that is generally absent (e.g. The norm of the Constitution of Ukraine that the State President shall grant pardons to convicted for criminal offenses has no sanctions and is not provided by means of coercion).

Sanctions are classified according to the following criteria:

1. Depending on the purpose:

- **protective**, aimed at the punishment of the offenders (imprisonment, fine);
- **restorative**, aimed at restoration of the violated law (the contract made by an incapable person is declared invalid);
- **warning**, that ensure prevention of offenses and promote reeducation (the suspect, seizure of property).

2. Depending on the degree of certainty:

- **absolutely certain**, where the kind and degree of legal liability for violation of the legal norm is exactly defined (e.g. for an employee who fulfils educational functions, commitment of an immoral act being incompatible with continuing this work entails termination of the employment contract (Art. 41 of the LCU);
- **relatively defined** in which limits of legal liability are specified from minimum to maximum (e.g. Threats or violence against a law enforcement officer, if committed by an organized group, shall be punishable by imprisonment for a term of seven to fourteen years (Art. 345 of the Criminal Code of Ukraine (CCU);
- **alternative**, in which several types of legal liability are specified and enforcement authorities select the most expedient one (e.g. Threats or violence against a law enforcement officer shall be punishable by correctional labor for a term up to two years, or arrest for a term up to six months, or restraint of liberty for a term up to three years, or imprisonment for the same term (Art. 345 of the CCU).

3. Depending on the sphere of application, there are constitutional, civil, administrative, disciplinary, criminal sanctions.

4. Depending on the composition, sanctions are divided into:

- **simple**, that define one measure of state punishment to violators. (e.g. Dismissal of employees from work by the owner or body authorized by him/her shall be allowed in the following cases: coming to work being intoxicated with alcohol, narcotics or other toxic substances (Art. 46 of the LCU);
- **complex**, that determine simultaneously several measures of punishment of the offender (imprisonment with confiscation of property).

5. Depending on the direction of negative consequences:

- **personal**, that focus on deprivation of certain rights (e.g. Knowingly unlawful apprehension or unlawful taking into custody shall be punishable

by deprivation of the right to occupy certain positions or engage in certain activities for a term up to five years, or to restraint of liberty for a term up to three years (Art. 371 of the CCU);

- **property**, that provide financial losses. (e.g. Disclosure of adoption against the will of the adopter is punishable by a fine up to 50 times the income).

The legal norm is not the content and form of the law as a whole, but only its part.

Questions for self-assessment

1. What are the elements of the structure of the legal norm?
2. What kinds of the legal norm do you know?
3. What kinds of hypothesis, disposition and sanction do you know?

The practical task

According to Part 1 of Art. 136 of the Criminal Code of Ukraine, failure to provide help to a person who is in a condition dangerous to life, where such help could have been provided, or failure to inform appropriate institutions or persons of this person's condition, where this has caused grievous bodily injuries, shall be punishable by a fine of 200 to 500 tax-free minimum incomes, or community service for a term of 150 to 240 hours, or arrest for a term up to six months.

Find the disposition, the hypothesis and the sanction in this article.

4. The sources of law

4.1. The concept of the law sources

The term "law sources" has ambiguous meaning. In one case it can be understood as a material source of law – a rulemaking power (a state authority, court bodies, a referendum, customs of people), in another case it implies historical monuments of law which had importance as acting in former times, in one more case it is a formal source of law and way of expressing the content of rules of behavior.

In legal literature there is also the term "the form of law". The terms "the source of law" and "the form of law" are very closely related, but not identical. The content of these concepts will be different depending on the context in which they are used – whether in relation to the law as a whole, or in relation

to a particular norm or group of norms. Thus, using the term "the source (form) of law" means that it is the source of law in the formal (legal) sense.

The term "source of law" is often seen in the following ways:

- **a source of law in the material sense.** It is social relations that develop and determine the origin, evolution and content of the law;
- **a source of law in the ideological sense.** It is an expression in the official form of a complex of legal ideas, opinions, theories under the influence of which law is forming and functioning;
- **a source of law in the formal (legal) sense.** That is official forms of external expression and consolidation of legal norms which act in a particular country, this is actually a form of law.

The source (form) of law *is the external expression and ways of consolidating the legal norms emanating from the state and having compulsory value.*

4.2. The system of the law sources (forms)

Depending on the level of public relations (a state, a union of states, the states of the whole world) the forms of the law can be divided into:

- the forms inside the state;
- regional, continental forms;
- international forms.

The internal forms of the law of the state include:

The legal custom that is the act-document containing rules of conduct which are formed spontaneously over a long time and become a habit of people; it is approved, guaranteed and protected by the state.

The legal precedent that is an act-document containing a judgment on a particular legal case made up by a judicial or other competent body (official) which becomes mandatory for the judgment in similar cases in future.

The normative legal act that is published following a special procedure as an official act-document of a competent rule-making body containing legal norms.

The normative legal contract that is a joint legal act which establishes a mutual expression of will of rule-making bodies.

The legal doctrine is the act-document containing conceptually designed legal ideas, concepts, legal categories developed by scientists with the aim of improving the legislation.

The religious-legal norm is an act-document containing religious norms, state-sanctioned and secured by it (an example of religious text can be the Vedas, the Bible, the Koran).

The principles of law are objectively inherent in law normative basics, undeniable requirements for the participants in public relations to establish a social compromise.

The regional-continental forms of law probably include forms of the European Union law (primary and secondary forms of law, forms of the precedent law, the general principles of law, etc.).

The international law forms should include an international legal act. The international legal act is a joint act-document of two or more states, containing legal norms about the establishment, change or termination of rights and obligations in the various relationships between them.

The major sources (forms) of law in the states of the world and Ukraine are:

- a statutory act;
- a legal agreement;
- a legal precedent.

Custom law (legal custom) has historically been the first source of law governing relations in the period of formation and state. It comes from customs as a specific type of social norms, but not every custom becomes legal, but one that complies with interests of a group of people, community or society and is recognized and sanctioned by the state, which gives it the status of a legal norm, turning it into a legal custom and taking under its protection.

The peculiarity of these rules is that they are not set by a decision of state bodies but appear as a result of repeated use over the centuries, fix human experience in people's minds and become a habit. In addition, as a result of the authorization by state, the custom gets a compulsory character, its observance is guaranteed and implementation is ensured by measures of state coercion.

The state does not recognize all customs prevailing in society, but only those with the greatest social value, consistent with its interests and stages of its development, it is a historically formed source of law and rule of conduct.

Custom law is a historically conditioned, unwritten, spontaneously formed, persistent rule of behavior of people that became a habit through repeated use over a long time, which is sanctioned and provided by the state.

In the legal systems of most modern states, the legal custom has lost the character of independent source of law and plays a minor role, it mostly applies to specific of social relations or specific areas of activity.

The legal custom is recognized in the legal system of Ukraine. Today the Constitution of Ukraine does not establish the legal custom as a source of law, but despite this, some laws contain such provisions. For example Art. 7 of the Civil Code of Ukraine establishes that civil relations may be regulated by a custom, in particular, by customs of trade.

The feature of the legal custom is that the law which it referred to gives it a status of the legal norm, but does not disclose its contents.

The state authorizes only those practices that do not conflict with its policies, universal human rights and freedoms, the moral foundations of society.

The legal precedent is a decision of the competent public authority with regard to a particular legal case, which is provided with formal obligatoriness in solving similar cases in the future.

The legal precedent is used when there are gaps in the legal regulation or there is a need for legal qualification of some specific circumstances.

The types of legal precedents are judicial and administrative precedents.

The judicial precedent is recognized as the major source of law in the countries of the so-called Anglo-Saxon legal system (the United Kingdom, the United States of America, Canada, Australia, India, New Zealand, etc.). In these countries, judges in the legal order are endowed with a lawmaking function. The precedent is binding on all lower courts and high courts bound by their previous decisions.

In these countries the precedent works closely with the legislation, eliminating gaps and determining its practical application. As a rule, the legal precedent provides a rule of behavior which regulates social relations which are also regulated by legal acts.

The legal contract is a written agreement in which rules of conduct of general nature are established by mutual consent between two or more subjects of legal relations and it is provided by the state.

Typically, an **agreement** is a major source of international relations, which plays an important role in the legal regulation of international cooperation. According to Art. 9 of the Constitution of Ukraine "international treaties ratified by the Verkhovna Rada of Ukraine are part of the national legislation of Ukraine".

One of the most common agreements, which take place in Ukraine, is a collective agreement. It is concluded at enterprises, institutions and organizations regardless of ownership and management which use hired labor and contain legal personality of the employer and the employee.

The normative legal act (statutory act) is an official written document adopted in accordance with the procedure established by law and the form developed by authorized law-making entities, which establishes the rule of conduct of general nature, and is provided by the state.

The Constitution defines the list of forms of normative legal acts for each subject of legislative activity, their hierarchical subordination, limits of the competence of these subjects and the order of operation of legislation acts throughout the time and space.

Normative legal acts have certain advantages over other sources of law, they are characterized by the following features. They:

1) always contain general provisions, that is, the legal rules that apply to a certain kind of social relations;

2) can be adopted by certain rule-making entities within their jurisdiction;

3) can be adopted in compliance with certain legal procedures;

4) are accepted by subjects of law-making in the form specified for each of them by the Constitution and laws of Ukraine;

5) are compulsory and provided by the system of state guarantees, including coercive means;

6) operate throughout the time, in space and number of persons.

4.3. Normative legal acts as a source of law and their system

It should be mentioned that normative legal acts as sources of law have significant specific features which make them qualitatively different from other sources of law. Moreover with their help the state can quickly implement the legal regulation, respond to the legal needs of the society, coordinate all the work of managing social processes.

Normative legal acts are the main sources of law in Ukraine. They can be classified depending on:

1) the *legal force* – into laws and subordinate normative legal acts (regulations);

2) the *subjects of law-making* – into normative legal acts adopted by:

- people at the referendum;
- head of state;
- legislative bodies;
- executive bodies;
- local government;
- public associations;
- officials and other entities.

3) the *scope of effect* – into general obligatory, special, local;

4) *the branch of law* – into normative legal acts that contain norms of constitutional, civil, labor, family, administrative, criminal and other branches of law;

5) *the external form of expression* – into laws, regulations, decrees, orders, decisions and the like.

The most common classification of legal acts is that based on the legal force. Depending on the legal force there are such elements of the legislation system (the system of normative legal acts) in Ukraine as:

1) **the Constitution of Ukraine**. The Constitution of Ukraine is the basic law of the state, which has supreme legal force. Law and other normative legal acts are enacted on the basis of the Constitution of Ukraine and shall comply with it (Art. 8 of the Constitution of Ukraine (CU). It takes the main place in the hierarchical system of legislation;

2) **laws of Ukraine**:

- constitutional laws that establish starting principles of legal regulation;
- regular laws which can be codified and uncodified. **Codified laws** (codes) are internally coherent complex normative legal acts (structurally divided into parts, sections, etc.) resulting from of the codification and providing legal regulation of certain spheres of social relations, combining norms of a specific branch (sub-branch) of law (Civil Code, Labor Code); **uncodified laws** (the laws of Ukraine "About Payment for Labor", "About Vacations" etc.) regulate other important social relations;

3) **subordinate normative legal acts**:

- resolutions of the Verkhovna Rada of Ukraine;
- regulatory decrees and orders of the President of Ukraine issued under the Constitution of Ukraine;
- subordinate regulatory legal acts of the executive bodies – decrees and resolutions of the Cabinet of Ministers of Ukraine, orders and instructions

of ministries, state committees of Ukraine and other central bodies of executive power;

- acts of local governments and local executive authorities;
- local normative legal acts of enterprises, institutions and organizations;
- collective contracts concluded between the owner or authorized body and the trade union organization to regulate production, labor, social and economic relations and coordination of the interests of workers, owners and authorized bodies;

4) **effective international agreements** ratified by the Verkhovna Rada of Ukraine according to Art. 9 of the Constitution of Ukraine and having become part of national law. (According to Art. 9 of the Constitution of Ukraine, "International treaties (contracts), ratified by the Verkhovna Rada of Ukraine are part of the national legislation of Ukraine. The conclusion of international treaties that contravene the Constitution of Ukraine is possible only after appropriate amendments to the Constitution of Ukraine"). Thus, the Constitution of Ukraine has greater validity than the norms of international treaties binding on Ukraine. However, the rules of international treaties ratified by the Verkhovna Rada of Ukraine, are part of national law and have greater legal force than all other acts of the Ukrainian legislation.

The list of normative legal acts is not exhaustive.

4.4. The limits of law regulations

Any legal act (law, decree, ordinance, regulation, etc.) must have certain criteria for operation. These criteria are:

- operation of a legal act throughout the time;
- operation of a legal act in space (in the territory);
- operation of a legal act with respect to a circle of people.

1. Operation of the legal act **throughout the time** covers:

- the moment of the legal act entering in effect;
- the time of termination of the legal act;
- reverse action of the legal act.

In theory of law there are the following variants of enactment of the legal act:

- the term of enactment is established directly in the normative legal act or specially adopted another act (along with the publication of the State Secret Law of Ukraine on March 10, 1994, the Resolution of the Verkhovna

Rada of Ukraine "On the Implementation of the State Secret Law of Ukraine" was published which states that it takes effect from the date of publication);

- since the time of adoption (the Constitution of Ukraine);
- from the date of publication;
- normative legal acts that have no specified effective date and for which there was no resolution on the order of enactment, shall enter into force in the territory of Ukraine after the 10-day period from the date of official publication;
- legal acts (decisions), approved at a referendum enter into force from the date of their publication if they have no other specified term.

The legal act terminates because of:

- the expiry date by which the act was issued (if it was specified in the legal act);
- direct cancellation of a particular act;
- actual cancellation of this act by another act which was issued about the same question;
- changing of the circumstances, for which the legal act was enacted.

Laws and regulations *do not have a retroactive effect* unless they mitigate or annul criminal, administrative responsibility of the person.

2. **The operation of normative legal acts in space** is characterized by the proliferation of their impact on the area of:

- the state as a whole;
- an appropriate region;
- an administrative-territorial unit;
- the enterprise, institution, organization.

Legal acts of Ukraine shall apply to the whole country. Legislative acts of Crimea shall apply to the territory of the Autonomous Republic of Crimea within the competence established by the Constitution of Ukraine and the Constitution of Crimea.

The territorial action of legal acts means operation of legislation within the territory of the state which includes:

- the operation of a legal act throughout the time;
- the overland space – the terrestrial territory;
- the body of the water – inland waters within the state borders and territorial waters within 12 nautical miles;

- the airspace over the state borders – at the altitude of 110 kilometers;
- the subsoil and continental shelf.

The extraterritorial action of a legal act is always governed by international treaties and provides operation of legislation of a state outside its territory. It is known as the right of extraterritoriality of states – the procedure under which institutions or individuals situated in the territory of another state shall be considered as having or being located in its own territory and are subject to its own laws and jurisdiction of their state. This order is effective with respect to:

- space objects under the flag and emblem of the state;
- pipelines;
- submarine cables and marine oil platforms;
- air, military and merchant vessels on the high seas, which go under the national flag;
- the territory of the diplomatic missions and consulates abroad.

The right of extraterritoriality is used by warships and planes which are situated with permission of a certain state in its territory but considered as part of the territory of another state.

There is a general rule concerning the order of operation of a legal **act with respect to the circle of people** according to which the legal act applies to all persons in the territory of its operation and subjects of relationship for which it is designed.

The legal act applies to citizens of Ukraine, stateless persons, foreign citizens, persons with dual citizenship, to all domestic common foreign and international organizations that do not have the law of extraterritoriality. Exceptions are some foreign citizens who are immune from the jurisdiction of the state of residence; separate diplomatic and consular staff (the issue of bringing them to legal liability is decided on the basis of legal agreements), as well as senior officials of other countries who are in Ukraine on an official visit.

4.5. The systematization of legislation

The legislation contains numerous normative legal acts adopted by various law-making bodies of the state in different historical periods, and therefore there are inconsistencies between the new and old legislation. Besides, legislation has documents that are not formally acting, gaps can be

found, regulations that are not related to each other; some legislative acts are repeated, and some of them have inaccurately formulated terms, etc.

Therefore, from time to time, there is a need to bring legislation in a clear system, eliminate contradictions through amendments and additions, i.e. to systematize legislation.

Systematization of legislation is activity of competent public authorities and authorized organizations aiming to order and improve existing normative legal acts, bring them into a single coherent system.

Systematization of legislation is a permanent form of development and streamlining of the existing legal system, it is carried out to determine and address the gaps and contradictions in the current legislation, make adjustments to it; improve the efficiency of the legislation; provide the ability to quickly find, correctly interpret all the necessary legal provisions; promote the study and research on law.

The main types of systematization are:

1) incorporation;

2) codification;

3) consolidation.

Incorporation is a kind of systematization of legislation that combines normative legal acts without changing their content into miscellanies in chronological, alphabetical or other manner.

The aim of incorporation is the support of the active legislation in the current condition that would ensure its availability, provide all subjects of law with reliable information about normative legal acts in their current version.

Depending on the validity of collections published, incorporation is divided into official and nonofficial.

Depending on the way of placing the material, incorporation is divided into the following types:

1) chronological;

2) systematic;

3) subject.

Codification is a kind of systematization of legislation that provides meaningful reviewing (elimination of differences and contradictions, obsolete norms) of normative legal acts that have a common subject and method of legal regulation and creation of a new systematic normative legal act.

Codification is in fact the highest form of law-making systematization of normative material. It summarizes, puts in order and complements the current

legislation combining it into a particular branch of law. The result is codification of the adoption of the new consolidated normative legal act of stable content that regulates a significant part of public relations within the scope of a particular branch of law.

Codification is carried out exclusively by state authorities under their jurisdiction and has an official character.

Codification acts may be expressed in different forms, namely:

1) the fundamentals of law;

2) codes;

3) statutes;

4) provision;

5) rules.

Consolidation is a kind of systematization of legislation which provides creation of a new consolidated act on the basis of several normative legal acts on the same issue where normative information is placed in a logical order after the editorial process, but without changing of the content.

Consolidation is used where there is no possibility of codification. It is widely used in law-making in order to streamline regulations on taxation, administrative liability and so on.

Questions for self-assessment

1. What is the source (form) of law?
2. What types of sources of law do you know?
3. What is the main source of law in Ukraine?
4. What kinds of subordinate acts you know?

The practical task

A citizen applied to the court for eviction of the roommate from his apartment. In support of his requirements he referred to:

1) the Housing Code of Ukraine;

2) a scientific journal article, in which scientists discuss an essentially similar situation;

3) a relevant Resolution of the Supreme Court of Ukraine on a similar claim.

Which of the given references must court take into account? What does the notion "the source of law" include and what sources of law do you know?

5. The system of law

5.1. The system of the law concept

The system of law is an inner unity of legal norms determined by economic and social constitution of society which make a concerted, subordinate organic whole divided into relevant branches which are relatively independent, adopted and autonomously functioning. The structure of the system of law is composed of legal norms, legal institutions, sub-branches and branches of law.

Thus, the **system of law** *is an objectively determined unity and coherence of legal norms of the state and their division into separate inter-connected components: branches of law, sub-branches of law and legal institutions.*

The central link of the system of law is the branch of law. **The branch of law** is a system of legal norms, united under a common subject and the method of legal regulation which regulates a certain area of public relations.

The sub-branch of law is a complex of legal norms that are elements of the branch of law. The sub-branch regulates a certain kind of social relations typical of that branch of law. Not all areas of law are composed of sub-branches of law.

Civil law of Ukraine consists of such sub-branches as:

- personal non-property rights of the individual;
- ownership and other rights;
- the intellectual property law;
- the law of obligation;
- the law of succession.

Sub-branches of the civil law are easy to identify by the name of the parts of the Civil Code of Ukraine.

Some branches of the law of Ukraine have sub-branches with norms fixed in various codes and legal acts of the relevant legislation. Thus, the Finance Law consists of the following sub-branches of law:

- the budget law with the rules codified and contained in the Budget Code of Ukraine;
- the tax law with the rules fixed in the laws about taxes in Ukraine;
- the bank law with norms contained in the normative legal acts of the bank legislation.

The legal institution is a group of legal norms that are part of a branch or sub-branch of law which regulate homogeneous social relations, which are closely related.

There are:

a) *branch institutions* of law consisting of the norms of one branch. It is easy to identify them as they have the same names as the sections of the Code. For example, the institutions of labor law are:

- the collective contract;
- the employment contract;
- the working hours;
- the salary and others.

b) *interbranch institutions of law* which consist of the norms of different branches of law and which can only be determined by the content of legal norms (the institution of responsibility for ecological offences).

5.2. The concept of the branch of law

The branch of law is a set of relatively independent legal norms that regulate the homogeneous sphere of public relations and have their own characteristic mode of legal regulation (i.e., subject, method, purpose, ways and type of legal regulation); it is a subsystem of the system of law.

The subject of legal regulation is social relations that are regulated by the norms of the branch. Thus, the subject of regulation by the norms of the family law is family relationships; the labor law regulates labor relations; the subject of the finance law is financial relations; in the criminal law these are relations associated with crime and punishment for having done such.

It should be emphasized that the subject of legal regulation only with appropriate methods is the basis for distinguishing between legal norms in different branches of law.

The features of the branch of law are:

1) covering a high quality homogeneous area of public relations;

2) having a relatively independent set of legal norms – dispositions (rights and obligations) that determine the conditions of their implementation, and the specific sanctions;

3) differing by originality of the volume, number of institutions that constitute it, presence or absence of law sub-branches;

4) having its own specific regime of regulation, which ensures the effectiveness of the branch as a whole and sub-branches and institutions of law formed in its structure;

5) being a stable and autonomous subsystem of the system of law in its functioning.

According to the fundamentality of norms, concentrated in the branches of law, they can be divided into:

- basic (fundamental), which contain the initial norms of the law regulating initial public relations, and have legal regimes of legal regulation that have particular significance for other branches of law and use them (constitutional – the leading one, civil, administrative, criminal);
- profiling (special, specifying), which contain norms of law regulating the scopes of public relations connected with initial social relations and aimed at specification of operation of certain norms of basic branches of law. The scope and regimes of profiling branches of legal regulation are "separated" from the areas and regimes of the basic branches of legal regulation, but cannot exist without connection with them (labor, family, land, financial, etc.);
- complex, which contain norms of law regulating the spheres of public and economic life (economic, agricultural, environmental, maritime law, etc.), arising on the basis of further development of the complex institutions of law which are formed at the junction of the adjacent branches of law and use the regimes that belong to these branches (economic, agricultural, environmental, housing, transport law) [109].

The branches of law, depending on the subordination in legal regulation, are divided into:

the branches of the substantive law that contain norms of law that directly regulate social relations (constitutional, civil, administrative, criminal, etc.);

the branches of the procedural law that contain norms of law defining the procedure for the implementation of the substantive law and that are derived from it (administrative procedure, civil procedure, economic procedure etc.).

The division of law into substantive and procedural depends on what legal norms dominate in them (substantive or procedural).

5.3. The basic branches of law and the general characteristic of their content and sources

The variety of social relations regulated by a large number of legal norms determines the availability of different branches of law among which we should specify the main branches.

1. *The constitutional law* of Ukraine is a determinant branch of law, which occupies a central place in the system of the law of the state.

The constitutional law is a system of legal norms that establish and regulate the basics of the economic and political organization of society, organization and the legal status of the state and local government, the territorial structure of the state, the rights, freedoms and duties of man and citizen and the implementation mechanism of the sovereignty of the people of Ukraine.

The constitutional law consists of the norms of the Constitution of Ukraine and constitutional laws, it regulates political relations and political activities in society, lays the groundwork for the formation of the legal system of the state and plays an integration role, because using methods inherent in it brings together all branches of law, creating an integrated, systematic formation.

2. *The administrative law of Ukraine* is a system of legal norms regulating social relations that arise in the organization and implementation of executive power. Norms of administrative law determine the status of governing bodies, regulate their activity in the field of government, ways ensuring legality in state governing, specifics of regulation of social relations in the economic, political, socio-cultural and other spheres, as well as relations connected with the internal organization of activity of public authorities, local authorities and applying administrative enforcement in cases of committing administrative offenses, realization and protection of the rights and freedoms of citizens in the sphere of the executive branch.

3. *The economy law of Ukraine* is a system of legal norms governing relations between economic entities that arise in the process of organization and implementation of economic activity, which is carried out professionally for the production of goods, execution of works, rendering of services, trade activity. The norms of the economy law regulate the state, collective, private sectors of economy, as well as relations in the state regulation of the economy.

4. *The ecology law of Ukraine* is a system of legal norms governing public relations of ownership, the use of natural objects and protection of the environment in order to meet environmental and other interests of individuals, legal entities, society and the state, as well as providing environmental safety.

5. *The housing law of Ukraine* is the system of legal rules governing public relations to ensure the constitutionally guaranteed right of citizens

of Ukraine to housing, proper use and preservation (safety) of the housing stock, its operation and maintenance, solving housing disputes, liability for violation of the housing legislation, as well as strengthening the legality in the field of the housing relations.

6. *The land law of Ukraine* is a system of legal norms governing social relations of possession, use and disposal of land to ensure rational use of land, protecting it from negative impact, protecting the rights of individuals and legal entities to land parcels and compliance with legislation in the field of land relations.

7. *The criminal law of Ukraine* is a system of legal norms contained in a single legal act – the Criminal Code of Ukraine, which defines the general principles, grounds and conditions for criminal liability, for socially dangerous and criminal acts, the types and measures of punishment for committing a crime, as well as grounds and conditions for exemption from criminal liability and punishment.

8. *The family law of Ukraine* is a system of legal norms that define and regulate the basics of marriage, non-property and property relations between spouses, parents and children, adoptive parents and adopted children, other family members and relatives in order to:

- strengthen the family as a social institution and as a union of individuals;
- build family relationships on an equal footing, on mutual love and respect, mutual help and support;
- provide family education, possibility of spiritual and physical development to each child.

9. *The labor law of Ukraine* is a system of legal norms regulating labor relations arising from the use of employees' skills in work, and other relations which are closely connected to labor ones:

- organizational and management relations in the sphere of use of hired labor;
- relations of employment;
- relations of compliance with labor legislation and labor protection;
- relations of resolving labor disputes and others.

10. *The financial law of Ukraine* is a system of legal norms regulating social relations that arise in the process of financial activities of the state and related to:

- the process of collection, distribution, redistribution and use of centralized funds of monetary assets needed to implement the objectives and functions of the state and its administrative-territorial units;
- establishment of the budget system, distribution of income and expenses between its elements;
- establishment, changing, termination, collection of taxes, fees and other mandatory payments to the budget and off-budget trust funds;
- financing and crediting;
- government loans and savings of a business organization;
- regulation of the activities of the National Bank of Ukraine and commercial banks and others.

11. *The civil law of Ukraine* is a system of legal norms governing personal non-property, property relations and relations arising in the field of intellectual activity which are based on legal equality, property independence and free will of their subjects in order to meet their various material and non-property needs and interests.

In addition to the above specific branches of law in the legal system of Ukraine there are also procedural branches of law as systems of legal norms governing the activity of the competent authorities of the state to protect the constitutional rights, freedoms and legitimate interests of individuals and legal entities.

12. *The constitutional procedural law of Ukraine* is a system of legal norms that determine the order of work and decision-making activity of public authorities, realization of material constitutional norms. Provisions of this law regulate the activity of the Verkhovna Rada of Ukraine, President of Ukraine, the Cabinet of Ministers of Ukraine, other public authorities, electoral process, the legislative procedure, the order of activity of the Constitutional Court of Ukraine and others.

13. *The administrative procedural law of Ukraine* is a system of legal norms that regulate the procedure of state governance, determine the order of acceptance, consideration and solving specific cases, complaints, applications, the order of proceedings on administrative offenses, the order of realization of subjective rights and legal duties established in the material administrative norms.

14. *The economy procedural law of Ukraine* is a system of legal norms concerning pretrial regulation of economic disputes and consideration of

these disputes by economic courts of Ukraine and bankruptcy cases of economic entities.

15. *The criminal procedural law of Ukraine* is a system of legal norms which regulates the order of criminal proceedings, pretrial investigation, trial proceedings in the appellate court, the execution of sentences (court decisions), proceedings at the cassation instance.

16. *The civil procedural law of Ukraine* is a system of legal norms which regulate actions of the judge and other participants in the trial during the court hearing and proceeding of civil, housing, land, family, labor and other cases.

There are also new complex branches of law (military law, tender law, juvenile law, integration law and so on). For example, the juvenile law is a system of legal (material, procedural, organizational) norms aiming to ensure the survival and development of children, the protection of rights, freedoms and legal interests.

5.4. The system of law and the legislative system

There are two possible interpretations of the legislation: broad and narrow. The *broad interpretation* includes the notion of legislation acts of legislative bodies and subordinate regulations, normative legal acts (acts of government bodies and others). *The narrow* one includes only acts of legislative bodies: laws and resolutions of the Parliament on putting these laws into effect.

In the USSR the legislation was understood as all normative legal acts of the state, so the importance of the law was decreased. There were many subordinate, especially departmental normative legal acts connected with law, so its value as a basis of legality and law and order was levelled.

Now preference is given to a narrow interpretation of law.

Legislation of the state is a system of all laws of a certain country ordered in a certain way, as well as international treaties ratified by the Parliament.

Normative acts included in the legislation did not necessarily have the form of law. It is important that the constitution stated that they had the force of law. The structure of the legislation may include normative acts of the president, government issued in the order of delegating its legislative powers in accordance with the constitution. This is a so-called "delegated legislation" (France, Great Britain and others).

Legislation is the law form of life of law. Namely legislation provides a formal definition of the legal norms (one of the features of the law).

The system of law and the legal system correlate as content and form. As the concept of the system of law characterizes the essential inner side of the objective law, the concept of the system of legislation reflects its outer side – the form.

The differences between the system of law and the system of legislation are as follows:

1. The system of law is invisible, because it reflects the internal structure of law but the legal system can be seen, because it is the external form of law.

2. The system of law is a complex of legal norms, and the legal system is a complex of normative legal acts.

3. In the system of law, legal norms are logically distributed into branches, sub-branches and institutions. As a rule, the norms of the branches of law are building material of which a specific branch of law is made of. Sometimes some branch of law exists, but the branch of legislation doesn't (for example the financial law, the law of social security, etc.). In this case the law is not codified and normative material is dispersed in several legal acts, which require unification.

In the system of legislation, normative acts are connected depending on the branches of legislation, which are divided into institutions of legislation. Branches of law are formed only on the branch principle, and without taking it into account, a branch of legislation may contain various branches of law norms (complex branches) or be created on the base of institution or a sub-branch or the law. It is possible that a branch of legislation exists without a branch of law (customs legislation, and others).

4. The system of law is made up of branches of law, which have their own subject and method of legal regulation but the system of legislation includes the branches of legislation, where there is no method of regulation, and the subject of regulation is not always homogeneous as for branches of law.

5. The system of law has only a branch, horizontal structure, the system of legislation may have a horizontal (branch) structure as well as a vertical (hierarchical) one. In federal states there are laws of the federation and its subjects' legislation (the vertical structure).

6. The primary element of the law is the legal norm with its structure (a hypothesis, disposition, sanction), and the primary element of the legislation is an article of the law, which contains the legal prescriptions, which usually do not include all the three structural elements of the logic legal norm. Regulatory prescriptions often consist only of hypotheses and sanctions; the disposition can be contained in another article of this law (the referential way of presentation) or in another legal act (the blanket way of presentation). Laws, including the norms of various branches of law, are provided by sanctions, which are set out in other legal acts (such as ownership, entrepreneurship laws, and others).

7. The system of law is formed objectively, in accordance with the existing social relations, and the system of legislation is created as a result of purposeful activity of authorized subjects and, therefore, involves a subjective element.

8. The structural elements of the system of law do not have external details (names of sections, articles, chapters and other parts which are peculiar to law). The structural elements of the legislation system (normative legal acts), as a rule, have titles of sections, chapters and articles. They may contain a preamble, the wording of the objectives and principles, common regulatory definitions etc.

The system of legislation is the main, but not only one form of existence of the system of law, because:

1) law may exist with legislation when it was formed through the customs which were supported only by emerged states (a so-called "legislative law");

2) law exists outside the legislation: the natural human rights have legal character regardless of fixing them in the law ("not legislative law" (law precedent, law custom, law contract).

Questions for self-assessment

1. What is the difference between the system of law and the legal system of society?

2. What structural elements of law do you know?

3. How do the system of law and the legislation system correlate?

4. What kind of systematization of legislation do you know and what is the difference between them?

The practical task

The Minister of Justice John Ashcroft after the tragedy of September 11, 2001 (the terrorist act) introduced a custom to begin a working day in the ministry with a morning prayer. After a while the minister also offered his subordinates to perform his own songs, the texts of which he gave before morning meeting to all the participants who had the opportunity to join singing them. However, many of the staff did not support this idea and even refused to sing (newspaper "Today" of March 6, 2002).

1. Can you agree that introduction of this rule for Ministry's employees is legitimate?

2. Is it possible to enter a custom as a rule of conduct by an arbitrary willful decision?

6. Implementation of law

6.1. The concept, forms and methods of implementation of law

The implementation of law is the embodiment of the requirements of legal norms in practical activity of subjects of law, that is the embodiment of prescriptions of legal norms in lawful behavior of subjects of law, in their practical activity; it can be seen as a process and as an end result.

To implement the regulatory requirements which are contained in laws and other legal acts means to bring into life (to the public relations, to the behavior of citizens) the will of the legislator and other subjects of law-making, aimed at establishing the law and order. Without such realization law loses its social significance and purpose.

The forms of implementation of legal norms depending on complexity and nature of the actions of the subject (with or without participation of the state) are as follows:

- the simple, direct (without participation of the state) form that is compliance, execution and use;
- the complex, mediated (with participation of the state) form that is applying.

The ways of direct implementation of law:

Compliance (of prohibitions) is refraining from acts prohibited by legal norms, strict compliance with established prohibitions (e.g. compliance

with the vehicle speed limit in city of 60 kilometers per hour, observation of speed limits by vehicle drivers). It provides a passive behavior of the subjects regardless of their desire.

Execution (of obligations) is committing active actions prescribed by legal norms in the interest of the empowered party, performing the obligations (e.g. timely completion and submission of the income declaration to the Tax Authority; observation of the provisions of the Criminal Code to provide assistance to a person in a life-threatening condition).

It requires active behavior of the subject regardless of his own desire.

Using (of permissions) is using the opportunities provided by the legal norms, realization of subjective rights to satisfy self-interest (for example, the realization of the right to higher education). Subjects use rights granted to them at their own discretion. It involves both active and passive behavior [109].

Applying of legal norms is organizational and power activities of competent authorities of the state to implement the legal norm depending on specific circumstances and personalized subjects (court decision).

Forms of implementation can be classified depending on other criteria (depending on the activity level (active and passive), order of implementation (voluntary and forcible), etc.).

6.2. Interconnection of law and legal relations

Norms of law and legal relations are interrelated. It is known that law can act only when specific events or activities are given the nature of legally importation facts (acts), which put people in the position of the parties to legal relations, which have interconnected subjective rights and legal responsibilities.

The interconnection of legal norms and legal relations:

1) the relations usually appear (terminate or change) and operate on the basis of the legal norm or when allowed by the legal norm;

2) legal relations are the form of implementation of the legal norm, its implementation in life, the legal norm in action;

3) legal norms and legal relations are essential components of the mechanism of legal regulation;

4) the legal norm includes a model of actual relations and their form – relationships: the hypothesis indicates the conditions of appearance of relations,

the disposition indicates the rights and obligations, and sanctions show the possible consequences of non-compliance with norms and relationships that appear on its basis.

Legal relationships are the objective form of the realization of rights and duties. Mostly because of legal relations (but not exclusively through them) functions of law are realized.

6.3. The concept and structure (elements) of legal relations

Legal relations are volitional social relations, regulated by law and provided by state, that manifest themselves in a specific connection between the authorized entities (carriers of subjective rights) and the obliged ones (carriers of obligations).

The features of legal relation are as follows:

1) this is a special type of social relations – between people or groups as subjects of law having a right to social benefits or any interests, which exist in the form of social relations – economic, institutional, political, family and so on;

2) they are ideological relations, the result of conscious activity (behavior) of people. Relations do not arise out of people's consciousness, legal norms cannot affect people, their behavior, as people are not aware of them and they become their sense of justice;

3) they are volitional relations, the will of all the participants (a sales contract) or only one of the participants (announcing awards, competition) is embodied in them;

4) they appear (change, terminate) on the bases of legal norm – in the case of emerging of legal facts established by the norm;

5) it is a legal form of specific (individualized) connection of entities – a legal fact which generates legal relations is always specific; the subjects are specific; their rights and obligations are specific; the object of relations is defined;

6) they usually have a bilateral character, one party (i.e., the creditor who is the entitled, authorized party) has a vague subjective right (the right to receive debt) and the other party (the debtor who is the obliged party) has relevant legal obligations (to return a debt). In some relations, each party has rights and obligations, powers and responsibilities.

7) they are protected by the state, provided by measures of state influence up to enforcement. In most cases, subjective rights and legal

responsibilities are carried out without the use of coercive measures. If necessary, the interested party may apply to a competent public authority that makes a decision with clearly defined rights and obligations of the parties. The possibility of state coercion creates a regime of social security, safety, legality.

The structure of relations includes the following elements:

1) subjects;

2) objects;

3) contents.

The subject (actor) of legal relations is a participant in the legal relationship, which has subjective rights and is able to fulfill legal obligations.

Legal entities can only be a person or an association of people.

The types of the subjects of legal relations are:

1) individual subjects (individuals):

- citizens of that state;
- foreign citizens or subjects of another country;
- the stateless;
- persons with dual citizenship.

Individual legal subjects (entities) operate in all spheres of public life: political, economic, social, ideological, and others. In Ukraine, only its citizens have all rights and obligations, while the rights and responsibilities of others are limited by the current legislation;

2) collective subjects (legal entities):

- public authorities;
- enterprises, institutions and organizations;
- local governments;
- officials (representatives of the government, or those performing organizational or administrative duties);
- public associations (political parties, trade unions, religious organizations, etc.).

Collective subjects realize their powers by issuing regulatory and individual acts, as well as by performing their duties and controlling compliance through material, organizational and coercive measures (for example, local governments organize and provide work of communal, transport and other structures). The state is also a collective subject as a subject of international, constitutional, civil and other relations;

3) social communities:

- people;
- a nation;
- population of an administrative-territorial unit;
- labor collectives and others.

The possibility of any subject for being a participant in legal relations is determined by the legal personality.

A legal personality is provided by law with an ability to be a bearer of rights and duties, to carry them out on his behalf and be legally responsible for his actions.

The volume of rights of each subject of law is different. For individual subjects it mainly depends on the age, citizenship, the state of mental health. Citizens of the state, compared with foreign citizens and stateless persons, have a large number of rights in the political sphere.

The legal personality of collective entities is defined by their competence and legal status of the legal entity, the volume of which depends primarily on the purpose of their creation and activity.

The legal personality, along with the legal norm and legal fact is a prerequisite for emergence of legal relations, it is a complex of legal capacity and legal capability. It should be noted that in the civil law of the Anglo-Saxon law system legal capacity and legal capability are defined by one notion (legal capacity). Although lately the court practice and doctrine define passive capacity similar to the "continental" legal capacity, and active capacity which is a capacity for performance of legal acts which correspond to the notion of legal capability.

Legal capacity is the ability of a person, as provided by the law, to have subjective rights and legal responsibilities.

The main types of capacity:

1) total capacity is the ability of a person to have any rights and obligations under applicable law. It is recognized by the state for individuals from birth and ends with death;

2) industrial capacity is the ability of a person or organization to acquire rights in a particular field of law;

3) special legal capacity is the ability which is related to certain characteristics of the subject, or such that require special knowledge and skills (e.g. judges, law enforcement officers). The legal capacity of legal

entities is always special. It arises at the moment of their state registration, and in some cases, according to the legislation – at the moment they receive licenses for certain activities and ends with their liquidation.

Legal capability is the ability of a person, as provided by the law, to acquire and implement his own subjective rights and to perform legal duties by his actions.

In other words, it is possible to realize legal capacity. The nature and volume of capacity is determined by the state and enshrined in the legal acts. Capacity is determined by the peculiarities of government, historical, national and religious traditions, the level of economic development, law, and civil society.

Unlike capacity, capability is characterized by the fact that the activity of the subjects should be realized, that is, it depends on the age and condition of the mental health of an individual.

Nobody has the right, without legal grounds, to restrict human capacity. Only court can restrict human capacity in the cases determined by the current legislation.

One of the forms of manifestation of legal capability is delictual capacity.

Delictual capacity is the ability of a person, as provided by legal norms, to bear a legal responsibility for commitment of unlawful acts.

Objects of relations are certain material, non-material and other social goods in respect of which relations between entities arise, change or terminate.

There are the following types of objects of relations:

1) material goods, i.e. subjects of the material world (natural resources, land, minerals, timber, etc.), things (means of production, commodities) and values (securities, money, etc.);

2) non-material goods which are the results of creative, intellectual human activity (works of literature, art, music, inventions, scientific discoveries, computer programs, etc.);

3) services of production and non-production nature as the results of certain behavior, causing the rights and obligations of legal entities;

4) private non-property goods such as life, health, safety, honor, dignity, personal freedom, inviolability of the home and other human rights and freedoms.

In modern legal systems of the world a human being cannot be an object of legal relations.

The content of legal relations is provided by the law complex of subjective rights and legal responsibilities of the subjects (actors) of legal relations.

Subjective rights are kind and measure of possible or permissible behavior of the subject of legal relations, as provided by the legal norm, with satisfaction of his legitimate interests and needs, provided by legal responsibilities of other subjects (actors), and protection from the state.

Subjective rights consist of the following options for the possible behavior of the authorized subject (entity):

1) the right to perform certain actions, that is, to realize their interests;

2) the right to demand certain actions from the obligated entity;

3) the right to demand restoration of the violated right, that is an appeal to competent state authorities for the protection of subjective rights and enforce providing legal obligations;

4) the right to use certain social good.

Legal obligation (duty) is established by the legal norm and provided by the possibility of a state coercion measure of proper behavior of the obligated subject (actor), which he must perform in the interests of the authorized subject.

Legal obligations include the following options for the possible behavior of the obliged entity:

1) to perform certain actions in favor of an authorized entity;

2) to be obliged to refrain from acts that are contrary to the interests of other actors;

3) to require other entities to make or not to make certain actions;

4) to bear a legal responsibility for any failure or improper fulfillment of actions established by the legal norm.

Subjective rights and legal obligations are closely related; they are connected and correspond to each other.

6.4. Legal facts

Legal facts are not elements of legal relations, but they are closely associated with them. Without legal facts, even with legal norms available, legal relations are impossible. Not all the facts, actions, events, circumstances, etc. acquire legal value, but only those that fall within the scope of legal regulation and may lead to legal consequences.

In other words, legal facts are the necessary conditions for the emergence, change or termination of legal relations and are characterized by the following features:

1) they are expressed in external circumstances or events of the material world and associated with their presence or absence;

2) they are directly or indirectly provided by law;

3) they cause legal consequences provided by law.

Thus, *legal facts* are specific life circumstances provided by law that cause emergence, change or termination of legal relations.

There are different ways of classifying legal facts. Depending on the reason, they distinguish the following types of legal facts:

1) according to the criterion of will, legal facts are divided into legal actions and legal events.

Legal actions are circumstances that relate to the volitional behavior of the subject of legal relations and are characterized as the external expression of his will and consciousness.

All legal actions may be *lawful*, i.e. those which meet the requirements of the law (for example, the conclusion of a contract) or *illegal*, that is, those that do not meet the requirements of the law (for example, an offense).

Legal events are circumstances or phenomena, emergence and termination of which do not depend on the will of the subjects of legal relations, but with the onset of which certain legal consequences ensue.

They distinguish *natural, anthropogenic (*human) and *man-made events*. Associated with them is the emergence of legal relations for restoring of damages (e.g. caused by a person as a result of the earthquake), the inheritance (e.g. in the case of death), the payment of insurance funds (for example, in the case of an accident related with equipment), and others. These events do not cause legal obligations, but merely serve as grounds for them;

2) the legal consequences of legal facts are divided into:

law-making – that is, facts that give rise to a legal relationship (for example, at a certain age the subject has the right to take part in the elections);

law-changing, when there are facts that determine the alteration of relations (for example, in the case of transfer to another job, terms, rights and obligations change);

law-terminating, when there are facts that are responsible for the termination of relations (for example, the abolition of state registration of a legal entity);

3) depending on the composition, legal facts are:

simple, that is consisting of a single life event or action of an entity, which is sufficient for the occurrence of legal consequences (e.g. writing applications for an annual leave);

complex, that is constituting a specific complex of simple individual legal facts necessary for the onset of legal consequences (e.g. pension relationship may occur only in the presence of such facts as reaching a certain age, length of service, etc.);

4) according to the duration, legal facts are:

one-time, that is, those facts which are composed of a single act (e.g. buying a ticket entitling to public transportation);

continuing, that is consisting of a continuous legal action or legal status (for example, stay in a marriage, service in the internal affairs).

Legal facts play an important role in the legal system, they combine the rule of law with real social relations. With their help, life circumstances acquire legal value and thus influence the social processes and phenomena.

6.5. The application of law as a form of implementation

Compliance, execution and use are the main forms of implementation of law. However, there is also a special form of implementation of law **– application**. It is the most voluminous link in the legal process. It is aimed at individual regulation of social relations. The use of a mediated form of implementation of law is substantially and formally different from the direct forms: execution, compliance and use.

The main purpose of application is to ensure the implementation of law in the forms of compliance, execution and use.

Application of legal norms is a form of implementation of legal norms by competent subjects as for solving a particular case, which has state-powerful, creative and organizing character, and is carried out in accordance with the established procedural order and ends with the publication of the act.

While compliance, performance and use are associated with the actions of citizens, non-governmental organizations, business associations (corporations), the application of law is realized by government bodies and officials. Citizens cannot apply legal norms. In the case when the public authority transfers some of its powers to individuals, in the process of implementation of law, they do not act as individuals, but as members of this government body.

Application of legal norms has special features:

- the state-imperious character means that application is one of the kinds of the activities of the state, carried out by government agencies and officials. The imperious character manifests itself in the fact that the application of law is carried out by the unilateral will of authorized subjects, not by agreement. Enforcement acts issued in the application process, are binding for execution and provided by the state;
- certainty of the subjects of this activity. While the implementation of law in the form of compliance, execution and use is carried by government agencies and officials, citizens have no right to engage in application. They can only initiate application of law, or assist the competent entities in this activity;
- it is implemented within the powers of a competent entity as well as the established procedural order regulating this process;
- it is implemented on the basis of the legal norm, has a creative, intellectual nature;
- it is ended by issuing an enforcement act, which has a state-imperious character and creates, changes or terminates a specific legal relationship.

The forms of application of law are: *operational and executive* – not related to offenses; *law enforcement* – aimed at prevention, termination of a crime, restoration of violated rights, punishment of guilty persons. This form of application is performed by state bodies.

Application of legal norms consists of three stages:

1. The investigation of the factual circumstances of the case.
2. Choosing and analyzing the legal norm.
3. Solving the case, which ends with the issuing of an enforcement act.

The requirements for application of the law are legality, reasonableness, expediency and justice.

6.6. Interpretation of law

Proper understanding of the content of the legal norm by all members of society is a necessary condition for the operation, development and improvement of legislation. In order to understand the legal norm, it must be properly explained. Interpretation of legal norms takes an important place in the process of application of law, it is a guarantee of correct application of legal norms.

Interpretation of the legal norm is an activity aiming to clarify and explain the content of the legal norm for its proper implementation.

The goals of interpretation of legal norms are:

- correct and uniform understanding of the meaning of legal norms;
- uniform and correct implementation of the requirements of legal norms.

Thus, the social purpose of interpretation of legal norms is providing correct, accurate and uniform understanding and implementation of legal norms by all entities (subjects of law).

Interpretation is necessary in the following processes:

1) rule-making – the development of new legal regulations requires meaningful comparison of the provisions of the current legislation;

2) systematization of legal acts – the creation of legal codes, assembly and reference books on law, accounting regulations;

3) the immediate implementation of the legal right – in the conclusion of transactions and contracts by economic structures of public organizations and citizens;

4) application of the rule of law by the courts, prosecutors, arbitration, other state agencies;

5) implementation of international law in national legislation (implementation of interpretation).

Depending on the subjects of interpretation there are such kinds of interpretation: official and non-official interpretation of legal norms.

Questions for self-assessment

1. Who can be the subject of legal relations?
2. How do you understand the concept of "legal personality" and its elements?
3. What kinds of objects of legal relations do you know?
4. What does the term "legal facts" mean?

The practical task

After graduation from college and institute, citizen V. had worked at the "Arsenal" factory for 32 years, holding consistently positions of tool-maker, shift foreman, shop superintendent, chief engineer.

However, due to the achievement of retirement age and taking into account the substantial experience in manufacturing, V. was dismissed at his own request by order No. 12/75 Km dated January 1, 2007.

V., already retired, bought a garden plot and took up gardening, fishing and more. Once he found his household appliances and garden tools missing, and officially reported this to the local policeman, specifying all the details of the circumstances in his application. Four months later, the person who committed the crime was detected, and later by the court, the material damage was recovered to the victim V.

Analyze all of the life circumstances connected with the history of citizen V. and identify those that can be considered as legal facts, distributing them on the volitional basis into actions and events.

7. The concept of legality and law and order. Offense and legal responsibility

7.1. The concept of legality, law and order, public order and discipline

Legality is a multifaceted phenomenon. It is considered as the principle of formation of a law-governed state, as a method of society control, as a regime of strict compliance with the law. Legality is also interpreted as a complex of requirements, guarantees that ensure order in the country.

First, legality is a regime of strict compliance with the current law, because law only has social value when it is observed. So *legality* is a legal regime of strict observance of current law by all subjects (actors) of law in the sphere of creation of law and law realization and in other areas of human activity, a regime, where rights and duties of man are performed by government and civil society. The main principles of legality are:

- the rule of law in the system of regulations;
- unity of law;
- cogency of law in social practice;
- the inevitability of responsibility for the offense [108].

Legality is an element of democracy, because it can be only in the limits of law. State bodies, local self-government bodies and their officials have to act only within their competence.

The result of legality is the condition of *law and order*. That is legal norms implemented in the system of social relations in which the activities of subjects of law are lawful.

Law and order have the following features: no violation of general legal prohibitions; realization of subjective rights and performance of legal duties by participants in legal relations; inevitability of legal liability of offenders in the case of non-fulfillment of duties or violation of rights and legitimate interests.

Legality and law and order are closely related with such legal categories as public order and discipline.

Public order is a real consistency of social relations that comply with not only the legal norms, but also social principles and public morality. Public order is the order in public places. *Discipline* is timely and accurate fulfillment of the requirements arising from normative and individual acts, technological, organizational, moral, social and other norms. There are such kinds of discipline as: public, financial, budget, labor, military, educational, environmental, etc.

So, legality as a regime of compliance of public relations with current laws (other legal acts), formed by subjects of law is characterized by the law and order.

Discipline as a regime of compliance of social relations with existing social norms formed by all social actors is characterized by public order.

Violation of legality leads to deformation of public relations, failure of law and order. Strengthening the legality results in higher level of law and order which is an essential condition for the realization of democratic institutions.

The ratio of legality and law and order is that the legality is a principle of action, relations, while law and order is a result of realization of this principle, the regime, and compliance with the law.

At the same time law and order make an important structural element of public order, which is a correctly adjusted condition of totality of social relations which are regulated not only by legal norms, but also by all other social norms. While strengthening and support of law and order is related to the fulfillment of the law, the support of public order is provided by other social norms – morality, corporate compliance, traditions and customs.

Thus, the concept of public order is broader than the concept of law and order. However, the level of law and order significantly affects the condition of totality of social relations.

Implementation of the regime of legality in the country is based on the system of guarantees, the effectiveness of which makes legality real. *Guarantees of legality* are means and conditions with the help of which state provides full and consistent fulfillment of its requirements.

7.2. Legal culture

One of the forms of manifestation of the sense of justice is legal culture, which is a special kind of general culture of people. Legal culture consists of non-material and material values related to legal reality. Formation of legal culture is not separated from the development of other forms of culture, it is due to historical, social, economic, political conditions, which are objectively formed in society, the extent of the warranty by the state and civil society, human rights and freedoms.

Legal culture is a complex of legal knowledge and values corresponding to the position in the legal sphere, a proper understanding of the requirements of the legal norms and conscious fulfillment of their demands.

The main indicators of the level of legal culture are:

1) the achievement of qualitative condition of legal protection and protection of rights and freedoms of man and citizen;

2) the degree of practical implementation of the principles of the rule of law in public life;

3) the level of the sense of justice of citizens and officials, that is, the degree of assimilation of the values of law, knowledge of law, their beliefs as to acting according to the requirements of legal regulations;

4) the quality of the legislation system, which is characterized by scientific evidence, democratic and humanistic orientation, fairness, lack of gaps and internal contradictions of legal regulations, the use of best practices and ways of regulating legal relations, etc.;

5) the condition of legality in society that is the establishment of requirements of legality in the legislation system, the reality of their implementation, as well as the functioning of the state system of legal education and legal education of the population;

6) the level of efficiency of law enforcement, in particular, law enforcement agencies and their officials;

7) the condition of development of legal science, attracting legal scientists to develop projects of normative legal acts and improve their content, the fight against crime programs, etc., the use of best legal experience of other countries.

Depending on the media (subject) of legal culture it is divided into the following types:

1) legal culture of society which is characterized and determined by the condition of the general culture of population, the level of development of the sense of justice and legal activity of society, the quality of the legal system and the current legislation, the existence of guarantees of protection of rights and freedoms of man and citizen, the state of law and order and legality, legal practice and legal science. It covers the totality of all the legal values created by people in the legal sphere. A high level of legal culture of society is one of the important features of a constitutional state;

2) legal culture of professional or social groups which is a kind of combination of the legal culture of society and the legal culture of individuals that make up these professional or social groups, has its own factors and specific character;

3) legal culture of a human which is inextricably linked with the legal culture of society, is derived from it, depends on the person's experience, the level of education, knowledge and understanding of the law, a person's ability to interpret the content of the law and define its scope; respect for the right of man, his belief in the need and usefulness of social normative legal acts; a human's ability to use legal knowledge in practice, implement and enforce their subjective rights and legitimate interests, fulfill legal obligations; availability of legal skills and lawful behavior. Legal culture of man presupposes a high sense of justice and legal activity in promoting the implementation of legal regulations, his understanding of the need to counteract offenses.

Legal culture of human exists at the ordinary, professional and theoretical level.

The ordinary level is characterized by a low level of mastery and understanding of legal knowledge which man uses in everyday life, during the implementation of its subjective rights and performance of legal duties.

The professional level is typical of people who are directly involved in legal activities, characterized by deep knowledge of the current legislation, understanding of the principles of law and the legal regulation mechanism, professional attitude to law in general and its practical application. On the professional level legal practitioners determine the effectiveness of the operation of law-making and law enforcement, in particular, judicial and law enforcement agencies of the state.

The theoretical level is typical of legal scientists who receive, summarize, systematize and use scientific knowledge of legal phenomena, develop tools and methods for using them in practical jurisprudence.

The ordinary, professional and theoretical levels of legal culture are closely interrelated and interdependent, they are formed in the process of legal education of the population through the acquisition of the relevant legal knowledge, perceptions, attitudes, emotions.

Legal culture in everyday life performs multiple functions, namely: cognitive, regulatory, communicative, educational and others.

7.3. Legitimate behavior and offense

One of the kinds of human activity is human behavior aimed at the satisfaction of his needs and achievement of certain personal interests as well as occupying a position in the sphere of public relations. Behavior of people has different forms of expression, goals, consequences, can be regulated by legal norms or be out of the sphere of law regulation (for example, relations of friendship, sporting, etc.). Behaviors of people which are regulated by legal norms determine the emergence of legal behavior.

Legitimate behavior is a behavior that meets the requirements of the law. It is a socially necessary and socially useful phenomenon, an objective prerequisite for normal functioning of society and the state.

Legal behavior is socially significant behavior of individual or collective actors, as provided by the law, which is controlled by their consciousness and will, and generates corresponding legal consequences.

Offense is a kind of behavior contrary to the public interest. It harms the rights and legitimate interests of citizens, their teams and the community at large, complicates and disorganizes the development of public relations.

Offense is an illegal, criminal act of a delictual capable subject, which is personally or socially harmful or dangerous.

The features of offense are:

1) public danger (harm), that is causing harmful effects or such consequences of the legitimate interests of individuals, society and the state, which are protected by law (harm can be moral, material and physical);

2) an offense may be only actions – that is, in the form of active action (e.g. theft) or in the form of inactivity – when the law obliges a person to perform certain actions, and the person fails to comply with it (e.g. failure to provide assistance).

Offense is always an act of an actor. Thoughts, intentions, beliefs, feelings, attitudes, social or personal property of a person is not an offense and, accordingly, cannot serve as the basis of legal liability;

3) wrongfulness of the act, that is, the act must directly violate the requirements of a particular rule of law. The acts that are not regulated by the current legislation are not considered a crime;

4) the guiltiness of action, i.e. the inner attitude of a person to a socially dangerous act and its consequences in the form of intent or negligence;

5) the delictual subject (the perpetrator), that is, the person of the age and state of mental health who is aware of the nature of their actions, manages and provides their effects, and may also be legally responsible for their implementation. A person must be aware that he acts illegally, if he does not realize it (because of childhood, insanity or other circumstances), there will be no offense;

6) punishability by law, that is, providing for a certain kind of measure of legal liability in the form of loss of personal, financial, organizational or material nature;

7) a causal link between the act and socially dangerous consequences, that is, such effects are conditioned by this act, and not by other reasons.

In the absence of even one of these signs an act cannot be considered an offense. Signs of an offense should be analyzed in the aggregate, systematically. To state that this or that particular act is a crime, it is necessary to observe certain criteria which allow for separating offense from other violations of social norms and forming the concept of corpus delicti.

Corpus delicti is a constituent elements of offense (*corpus delicti* is a Latin term meaning the "body of crime"). It is a combination of particular objective and subjective elements of crime that qualifies the socially harmful conduct as a criminal offence of a given kind.

1. The subject of offense is individuals and legal entities who have an ability and opportunity to be legally responsible for their illegal actions (delictual capability).

2. The object of offense is social relations which are regulated and protected by law. It is necessary to distinguish between the concept of the object of legal relations and the object of offense. While the object of legal relations can be various material things and non-material values, the object of offense can only be public relations protected by the law.

3. The objective element of offense is wrongful acts (action or inaction), their dangerous or harmful consequences and the causal relationship (causation) between the act and its consequences.

4. The subjective element of offense is a certain mental attitude of the subject to his unlawful behavior and its consequences. This attitude is reflected in the concept of guilt.

Depending on the intellectual and volitional mental attitude of a person to committing acts, law divides guilt into deliberate intent and recklessness (negligence).

1. Intent as a form of guilt is characterized by the fact that a person committing illegal actions realizes their unlawful nature, assumes dangerous consequences and wishes their occurrence (direct intent), or enables them to be offensive, but shows indifference to their offensive nature (indirect intent). A crime is committed with direct intent if a person is aware of the social danger of his conduct (an act or omission), foresees the possibility or inevitability of the onset of socially harmful consequences and desires those consequences to occur.

2. Recklessness occurs when the person foresees the abstract possibility of socially dangerous consequences of his actions, but thoughtlessly counts on preventing their occurrence (negligence), or does not foresee such consequences, although he should and can foresee them.

The types of offenses are:

- crime (felony), which is, under criminal law, a socially dangerous offense (act or omission) committed by the subject of crime;
- misconduct (misdemeanor), which is a socially harmful, guilty, wrongful act which provides legal responsibility. The types of misconduct are: constitutional, administrative, disciplinary, civil.

The kinds of crime are: serious, moderate, very serious.

As for misconducts they are classified into the following main types:

1) constitutional offense is offense against the order of the organization and activities of state power and administration, constitutional rights and freedoms of citizens;

2) administrative offense is offense against the state or public order, property, rights and freedoms of citizens to the established order of management;

3) disciplinary offense is offense which disrupts the normal operation of enterprises, institutions, organizations and impinges on labor, military, educational and other disciplines;

4) civil offense is that arising in the field of property and related personal relations.

7.4. Legal liability

One of the main means ensuring lawful behavior and fighting crime is legal liability. *Legal liability* is defined as legal obligation of the offender to undergo forced deprivation of certain values he owned which is established in legislation and ensured by state.

The features of legal liability are:

- it is a relationship between the state and the person who has violated the law;
- these relationships are provided in advance by the law, are governed by it, and are, therefore, legal relations;
- legal liability is incurred as a result of violations of the formal rules of certain legal requirements or individuals;
- legal liability is manifested in a particular state influence (punishment) and is mainly implemented through the application of state coercion;
- the process of preliminary investigation and resolution of cases of violations, the procedure of the assigned punishment is also regulated by special (procedural) legal norms.

The **purposes** of legal liability are:

- protection of law and order;
- protection of the rights and legitimate interests of individuals and legal entities from illegal encroachments;
- education of the offender, that is, the impact on his mind in order to prevent his recommission of offense;
- prevention of crime, that is, the impact on others in order to prevent crime.

The purpose of legal liability is specified in its functions.

The functions of legal liability are:

1) *punitive* (penalty, repressive), which is the negative reaction of the state to the committed offense and the punishment of the guilty person, infliction on him personal, property or organizational burdens expressed in negative consequences for the offender;

2) *compensational* (*recovering rights)*, aiming to defend the violated interests and recover public relations violated by unlawful conduct, recover the damage caused by the offender, compensate for pecuniary and non-pecuniary damage;

3) *preventive and educational*, designed for increasing the level of the sense of justice and legal culture of citizens; instilling respect for rights and necessity of lawful behavior; reeducation of offenders and formation of motivation to encourage them to observe the laws and respect the rights and interests of others.

Legal liability is based on the following **principles**:

1) *legality* that is legal liability arising in the case of: corpus delicti; concerning a physical act – act or omission (not for the views, outlook, personal property); socially harmful and guilty acts committed by a delictual capable person;

2) *validity* which is expressed in establishing the fact of committing a wrongful act by the offender as objective truth; other legally relevant facts related to the findings of the infringement and the subject of the offense. The principle of presumption of innocence requires that the guilt of the person who is liable, has to be established and defined in the special normative act;

3) *advisability* which is expressed in the correspondence of the chosen means of influencing the offender and the goal of legal liability (to protect law and order, to cultivate an attitude of respect for the law);

4) *inevitability* that is inevitability of responsibility of the offender; efficiency of application of liability for the committed offense; efficiency of measures applied to offenders. Ignorance of the law does not exempt from liability. The principle of inevitability of punishment must not violate another principle of responsibility – the presumption of innocence;

5) *timeliness* meaning the ability to bring the offender to responsibility within the statute of limitations, that is the period which is not too remote from the fact of the offense. For administrative and disciplinary offence the statute of limitations is several months; for criminal offenses it is from one year to 10 – 15 years (depending on the severity of the crime and the circumstances of the case). Lapse of time entails exemption from legal liability (limited administrative, criminal, labor laws);

6) *justice* which is expressed in not applying criminal penalties to misdemeanors; penalties should not assault human dignity; not using retro-active law that establishes or enhances responsibility, but softens it (the principle of punishment according to the gravity of the crime); setting only one sentence for one offense (this principle has become an axiom).

Types of legal liability are constitutional, criminal, administrative, civil, disciplinary.

Questions for self-assessment

1. What is the difference between crime and misconduct?
2. What kinds of offense do you know?
3. How do you understand the concept of corpus delicti?
4. What is legal liability and what are its functions?

The practical task

The citizen Kravets being drunk broke the shop windows. The lawyer insisted that offence was committed by negligence, because his client was in such condition that he could not control his behavior. What is your point view on this issue?

8. The concept of civil law and civil relations

8.1. The concept of civil law

Civil law is one of the fundamental branches of the legal system of Ukraine. Many relations in our everyday life are regulated by the norms of civil law (journey in public transport, buying bread, visiting a theatre etc.). Civil law plays such an important role in society life, in economy of Ukraine that the Civil Code is often informally called the second or economic constitution of Ukraine.

Civil law as private law (in the objective sense) is a complex of legal norms which regulate nonproperty and property relations by the dispositive method based on legal equality, free will, property independence the participants in relations.

The norms of the civil law are contained in different normative legal acts; the most important of them is the Civil Code of Ukraine. It was enacted on 1 January, 2004.

The subject of any branch of law is public relations regulated by it. The **subject** of civil regulation is two groups of relations: *nonproperty* and *property civil legal relations*.

8.2. Civil law relations: property and nonproperty

Civil law regulates two kinds of relations: nonproperty and property (civil relations). They are based on legal equality, free will and property independence of their participants – individuals and legal entities, Ukraine as a state, the Autonomous Republic of Crimea, local communities, foreign governments and other entities of public law (Art. 1, 2 of the Civil Code).

Art. 269 of the Civil Code establishes: *non-property rights* belong to every individual from birth, and he has them for life (the right to life, the right to health care, etc.). Legal entities also have non-property rights (for example, the right to the name, trademark, business reputation etc.). The characteristic features of nonproperty rights are as follows. Firstly, they are an integral content of civil capacity of natural and legal entities. Thus, all individuals are equal to have civil rights, and each of them has all nonproperty rights stated in the Constitution and the Civil Code of Ukraine apart from those non-property rights intended to ensure his natural existence, or those that provide his social existence. In the cases established by law, the ability to have non-property rights is connected with the achievement of an appropriate age by any individual (for example, the right to donation, the right to information about his health status is achieved by an individual only from the age of 18, the right to change the name – from the age of 16 years, and with the consent of the parents or one parent with whom he lives, or the guardian – with the achievement of 14 years etc.). A legal entity is capable of having the same civil rights and responsibilities as an individual, except those which can only belong to a man by their nature. Secondly, these rights have specific features of arising and termination. For example, nonproperty rights arise by the rule, with the birth of an individual and exist for the term of life, but they can also arise under the law and exist for the term of life; the right to the name (commercial, corporate) emerges for a legal entity since its creation and exists by the rule until termination of one's activity. Thirdly, they are connected with the personality of an individual and, as a consequence, cannot be alienated either voluntarily or forcibly; a person is deprived of the right to refuse them. However, this rule does not apply when it comes to a physical person-entrepreneur or a legal entity that can enter into a contract of commercial concession, the subject of which is the right to use intellectual property rights, commercial experience and business reputation. Such rights are deprived of a material nature.

Property relations arise in connection with the use of various property benefits (things, works, services etc.) and are based on legal equality, free will, property independence of their participants. Property relations that do not meet these characteristics are not relevant to the subject of civil law and cannot be regulated by its norms. Part 2 of Art. 1 of the Civil Code provides: the civil legislation shall not be 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.

8.3. The method of civil law regulation

Law regulates relations by establishing a legal connection between participants using some forms of impact. Thus, there is a connection between the subject of legal regulation that responds to the question "What does that branch of law regulate?" and the method of legal regulation that responds to the question "How does this happen?"

As regards the determination of the method of legal regulation of the branch of law, there are several points of view. The authors share the opinion of those lawyers who believe that the *method of the branch of law* is a set of techniques that create a manner of its impact on people's behavior. Hence the *method of regulation of social relations* is a particular way of influencing the behavior of their members, which is used by the state.

While public branches of law use the imperative (centralized) method of regulation which is characterized by such features as coercion, rigid hierarchy of the subjects of relations, establishment of conduct and competence by laws, private branches of law cannot apply it.

Civil relations are based on legal equality, free will, property independence of their participants. This means that they can act on their own, in particular, have the right to regulate their relations in the contract which is provided by acts of civil law. If they are not regulated, the question about means and realization of their rights is to be resolved. In the private sphere, there is legal equality of parties to the relevant relations. They can act on their own initiative, because in this area the interests of a private person take priority. For regulation of civil relations the method of decentralization (coordination) is optimal. The specific feature of the method of civil regulation is, in particular, that the subjects of civil law, being legally equal, are endowed with dispositive capacity and initiative.

8.4. The objects of civil law relations

One of the essential elements of civil relations is their object. In civil law the issue of the object is one of the most difficult ones. At different times, scientists expressed polar views on this matter. Some lawyers understand the objects of civil legal relations as objects of the material world, any benefits, actual social relations, behavior and even a man, while others insist

that the object of legal relations is social connections that emerge between the actors.

It may be noted that all civil relations are formed about a certain property or nonproperty benefits. Property objects of legal civil relations are *money, things, securities and property rights.* Objects can also be *results of some kinds of human activity such as work and services.* Thus, a legal civil relationship may arise between the parties regarding the implementation of different kinds of contract work. The result of this work is a constructed house, a fixed thing, a sewn costume and so on. In addition to this, there exist specific results of human activity – services. Their peculiarity is that the results of activity of rendering services are connected with that activity and are inseparable from it. Thus, according to the contract for carriage of goods the direct object of legal civil relations is the process of transportation, and its material result is that the cargo has reached its destination. Services can be provided in different spheres of activity of man, and can be medical, information, legal, intermediary, etc.

Among nonproperty objects of civil relations they distinguish such objects as:

a) results of intellectual and creative activity of a person or objects of the intellectual property right (works of science, literature, art, discoveries, inventions etc.);

b) information;

c) nonproperty benefits (honor, dignity, business reputation, name, image, privacy, etc.).

8.5. The sources and system of civil law

As has been noted, the structure of the system of law is formed by legal norms, institutions of law, sub-branches of law and branches of law which are relatively independent, adopted and autonomous.

The system of civil law is a complex of separate parts – sub-branches, institutions, sub-institutions, civil legal norms, which are in internal logical connection and dependence between each other. The structure of the system of civil law is determined by specificity of relations regulated by it and its elements are civil legal norms, institutions, sub-institutions and sub-branches.

Civil legal norms are legal precepts which regulate personal non-property and property relations of their members.

The civil law institution is certain groups of civil legal norms regulating homogeneous relations. For example, such institution as a legal entity regulates relations connected with creation of organizational and legal forms, the legal status of legal entities of private law.

A sub-institution is a part of a civil law institution, which is a group of civil legal norms which regulate relations within a particular institution. For example, the institution of buying and sale has such sub-institutions as: retail sale, supply, contracting of agricultural products, supply of energy and other resources through the network, a barter agreement. The institute of damage indemnification includes, for example, such sub-institutions as: indemnification of losses caused by the disability, other health injuries or death; damage resulted from defects of commodities, works (services). Institutes and sub-institutions have their common provisions, which indicate the legal uniformity of civil law norms that are covered by them.

The complex of legal institutions which regulate homogeneous relations is a **sub-branch of civil law**. In the authors' opinion, the civil law of Ukraine comprises five sub-branches, namely: *nonproperty rights of the individual; ownership and property rights to someone else's property; the intellectual property law; the law of obligation; the law of succession.* For example, the intellectual property law combines several legal institutions, namely the institution of copyright and the patent law institution. Such sub-branch as the law of succession consists of the testamentary institute and the institute of hereditary succession. The law of obligation consists of two institutions – the contract law (contractual obligations) and non-contractual obligations, which in turn are divided into sub-institutions. Thus, non-contractual obligations include those which arise from unilateral contracts, tort obligations, etc.

The system of the civil law of Ukraine is divided into two parts – general and special. The *general* one consist of such norms as: civil law as private law, a range of civil relations; sources of civil law; members of civil relations, objects of civil relations, the grounds of emergence of civil rights and civil responsibilities; transactions, representation and power of attorney, terms, etc. The norms of the general part apply to all civil relations, to all sub-branches, institutions and sub-institutions that do not allow the rules that already exist in the general part to be included in them. However, each of the sub-branches and even institutions has their common provisions. For example, the following institutions have general provisions: the ownership

right, the institution of proprietary rights to other's property, the institution of services, and the institution of indemnification of damage and so on.

A *special* part of the civil law consists of: personal nonproperty rights of the individual; ownership and other proprietary rights; intellectual property law; the law of obligation; the law of succession.

The system of the civil law as a branch of law should be distinguished from the system of the Civil Code and other systems of codified acts (the Maritime Code, the Housing Code, etc.) which are only an external form of the civil law and are internally consistent acts of the civil law which comprise certain sub-branches of public relations with maximum fullness.

The sources of the civil law are acts of civil legislation. Acts of civil legislation of Ukraine are a complex of external forms of the civil law structurally ordered in a defined hierarchical ratio in each of which legal norms are grouped according to peculiarities of certain spheres of legal regulation in order to ensure the most efficient regulation of personal non-property and property relations, which form a subject of the civil law.

The Civil Code establishes such acts of civil legislation as: *the Constitution of Ukraine, the Civil Code of Ukraine*, and *other laws of Ukraine*, which are adopted in accordance with the Constitution and the Civil Code; *acts of the President of Ukraine* (hereinafter – the President); *the decrees of the Cabinet of Ministers of Ukraine* (hereinafter – the CMU) as established by the Constitution of Ukraine; *normative legal acts of other state authorities of Ukraine* (hereinafter – the acts of public authorities), *authorities of the Autonomous Republic of Crimea* (hereinafter – the ARC), only in the cases and within the limits prescribed by the Constitution and law (Art. 4). Art. 4 of the Civil Code defines the general provisions on the regulation of civil relations in Ukraine, establishes an exhaustive list of the main legal acts and their subordinate correlation.

The acts of civil legislation are divided into laws and subordinate normative-legal acts.

Laws may be constitutional, codification, current and exceptional. Constitutional laws are: the Constitution – the Constitution of Ukraine as the framework of the civil legislation of Ukraine and laws which contain a supplement to it. The codification law is the Civil Code a basic act of civil legislation of Ukraine which has a special, higher legal force. All other laws of Ukraine are current and are accepted in accordance with the Constitution

and the Civil Code. Exceptional laws are an exception to the general rule, because their adoption depends on natural, environmental or social situations of extraordinary character, in connection with which they temporarily operate.

Subordinate normative legal acts are decrees and orders of the President, Resolutions of the CMU, acts of other state authorities of Ukraine and the government of the ARC.

The *Constitution* as the framework of the civil legislation is the basic law of Ukraine, which has the highest legal force and embodies the principle of the rule of law. Laws and other legal acts are adopted on its basis and must comply with it. Thus, the act of legislation which does not comply with the Constitution is invalid. The norms of the Constitution are norms of direct effect. The exclusive legal property of the Constitution is that it is a direct source of national law, the fundamental basis for each branch of law, including the civil law.

The Constitution contains the fundamental legal principles relating to the legal equality of participants in civil relations; economic diversity of social life; diversity of property turnover; other provisions that have a fundamental importance for the civil sphere.

The Constitution of Ukraine defines the equality of legal regulation of relations, including those relating to private spheres. In particular, according to Art. 92 of the Constitution, rights and duties of man and citizen; legal personality of citizens; the legal regime of property; legal basics and guarantees of entrepreneurship; the basics of civil liability and so on are defined only at the level of the law. For the general principles of civil legislation constitutional provisions on judicial protection of civil rights and interests have principal importance.

The *Civil Code of Ukraine* is the basic act of the civil legislation of Ukraine. In the field of the civil law, codification is one of the main ways of systematizing (ordering) the legislation. It is the adoption of a single new law, the contents of which constitute both the new rules and the previously adopted laws, or codified acts: with the new law's entry into force they are null and void.

In the domestic civil law there are two levels of codification: general and special. The general level is associated with the adoption of the new Civil Code, which covers all the basic rules of regulation of the civil sphere. The second level of codification is that in addition to the civil law of Ukraine there

are codes devoted to the regulation of narrow areas of nonproperty, property and organizational relations (the Housing Code, the Air Code, the Code of Merchant Shipping, etc.).

The Civil Code adopted on January 16, 2003 entered into force on 1 January, 2004, and became the third one in the history of the codification of civil legislation of Ukraine in the last hundred years.

Significant changes in the socio-political and economic spheres of public life in Ukraine, occurred after the declaration of independence and the adoption of the new Constitution caused fundamental changes in the civil sphere and made it necessary to establish new principles of legal regulation of non-property and property relations. There was a need to regulate relations with individuals and legal entities on the basis of universally recognized principles of private law: the inadmissibility of arbitrary interference with the personal sphere of man; inadmissibility of deprivation of property rights, except in the cases established by the Constitution and the law; freedom of contract; freedom of entrepreneurial activity not prohibited by law; judicial protection of civil rights and interests; justice, fairness and reasonableness (Art. 3 of the Civil Code).

Art. 4 of the Civil Code establishes that the other laws approved according to the Constitution of Ukraine and the Civil Code shall also represent the acts of the civil legislation. If a legislative initiative subject presents a draft law to the Verkhovna Rada of Ukraine, 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.

The Civil Code has a traditional for Ukraine pandect system and is designed based on the so-called "book" principle: Book 1 – "The General Provisions"; Book 2, as has already been pointed out, – "The Nonproperty Rights of an Individual"; Book 3 – "The Right of Ownership and Other Proprietary Rights"; Book 4 – "The Intellectual Property Law"; Book 5 – "The Law of Obligation"; Book 6 – "The Law of Succession".

Each of the six books consists of separate sections. The basic structural units of the Civil Code are chapters, there are 90 of them. They have divisions in some cases. Chapters, as well as articles are numbered consecutively. Some chapters are divided into paragraphs, and sometimes – into subparagraphs.

Another category of legal acts constitute *subordinate legal acts*. There is an objective need not only for organizational support of implementation of existing laws, but also for prompt regulation of certain civil relations, and that necessitates the adoption of normative legal acts of the subordinate level. As has been noted, these are acts of the President, the CMU, as well as acts of public authorities and the authorities of the ARC. In accordance with part 2 of Art. 19 of the Constitution, those authorities and their officials are obliged to act only on the basis, within the powers and in the manner established by the Constitution and laws.

President shall issue decrees and orders, binding in the territory of Ukraine, aimed at both the implementation of the Constitution and laws of Ukraine, including the Civil Code. Describing the acts of the President as subordinate, one should note that they cannot change or amend laws.

The Civil Code provides for the cases when the legal acts of the President ensure the implementation of the basic principles of the civil law. It means the implementation of the protection of civil rights and interests of individuals by the President within the powers defined by the Constitution (Art. 17 of the Civil Code). However, in the cases provided by the Constitution, the legal act of the President may limit the possibilities of the natural person to have civil rights and obligations not prohibited by law (Art. 27 of the Civil Code).

The CMU provides the implementation of internal and external policy, implementation of the Constitution and laws of Ukraine, including the Civil Code (Art. 116 of the Constitution). In such circumstances, the authority has a right to issue resolutions on almost all issues of the civil sphere if those decisions are not related to the competence of the Verkhovna Rada of Ukraine or already settled at the level of law. Moreover, if the resolution of the CMU contradicts the provisions of the Civil Code or any other (current) law, preference is given to the last one (part 4, Art. 4 of the Civil Code).

Normative legal acts of state and government of the ARC. Their feature is that they may be passed only in cases and within the limits prescribed by the Constitution and the law. Also according to the Decree of the President dated October 3, 1992 "On State Registration of Normative Acts of Ministries and Other Bodies of the Executive Power" normative acts relating to the rights, freedoms and legitimate interests of citizens or having interdepartmental character must undergo mandatory state registration in the Ministry of Justice of Ukraine.

Acts of the civil law and contract. The dynamics of commodity and money circulation, the variety of legal connections between the parties to civil relations exclude the possibility of their ordering only by normative regulations (external regulation). Legal equality, self-determination and property independence of participants in civil relations creates objective conditions for them to commit acts of legal significance in order to ensure self-regulation (internal regulation) of their mutual relations. Self-regulation of relations in the sphere of private law is carried out by using such local acts as charters and regulations of legal entities, contracts and unilateral transactions. Contracts have an important value in providing self-regulation of civil relations. The authors agree with the fact that under modern conditions private law contracts should be regarded as a universal legal means (element) of the internal mechanism of regulation of social relations (self-regulation).

Acts of civil legislation and international treaties of Ukraine. Ukraine is a part of the global community and therefore cannot ignore generally recognized principles and norms of international law and international treaties in which it participates. Under the Constitution, the running international agreements which are obligatory with the consent of the Verkhovna Rada of Ukraine, are part of national legislation of Ukraine (Art. 9). This is fully consistent with the provisions of part 1, Art. 17 of the International Treaties Law of Ukraine. The need to take into account international agreements that do not contradict the Constitution specifies the Plenum of the Supreme Court of Ukraine in its resolution "On the Application of the Constitution during Implementation of Justice", emphasizing that the court may not apply a law that regulates relations other than an international treaty.

Thus, international treaties which are obligatory with the consent of the Verkhovna Rada of Ukraine, are an integral part of national legislation of Ukraine and are used in the manner provided by acts of domestic legislation. This rule is established in Art. 10 of the Civil Code, according to which, if the current international treaties of Ukraine concluded in accordance with the law, contain rules other than those established by the relevant act of the civil law, rules of the international treaties of Ukraine are used.

Acts of civil legislation and custom (practice). An important novelty of the provisions of the Civil Code is that civil relations may be regulated by custom, in particular by the business-dealing customs (practice) (Art. 7 of the Civil Code). A custom is a rule of conduct not established by civil legislation

but stable and applied to a certain sphere of civil relations. A custom (practice) may be specified in the appropriate document. Thus, a custom is also a kind of form of law which as a legal act is the way of external expression and consolidation of legal norms.

For a custom to be applied it does not matter if it is established in any form, including a document; what counts is that it gets a steady and common character for a certain sphere of activity (in particular business). Herewith practice should not contradict the provisions of the contract or act of civil legislation. If this rule is violated, practice is not applied.

The use of a custom in certain civil relations is authorized in the Civil Code by reference to it in the legal norm, but its content is not disclosed. In particular, such references are contained in Art. 526 according to which an obligation shall be properly fulfilled according to conditions of the contract, requirements of the Civil Code, other acts of civil law; and in the absence of such conditions and requirements it is done according to traditions of business practice or other universally recognized requirements. In view of these practices there can be established the place for fulfillment of obligation (part 2, Art. 532 of the Civil Code), the procedure for reverse fulfillment of obligation (part 2, Art. 538 of the Civil Code), fulfillment of alternative obligation (Art. 539 of the Civil Code); the parties shall be free to conclude an agreement, to select a contractor and determine the provisions of the agreement taking into consideration the requirements of the Civil Code, other acts of civil legislation, customs of business turnover, requirements of rationality and justice (Art. 627 of the Civil Code), and others.

8.6. Property relations: the concept and content of ownership. Kinds of forms of ownership

The ownership right as any other right has its own sense which lies in the unity of three powers – *possession, use and disposal.* The owner shall possess, use and dispose of his/her property at his/her own discretion. The owner has all these powers but each of them can be owned not only by the owner but other person who got it from the owner (for example by contract of rent).

Possession is the actual availability of things with the owner and his ability to influence it directly. Possession may be legitimate (e.g. a person has the right of ownership with respect to things) and illegal (for example,

possession of property obtained by criminal activities, assignment of findings). Illegal possession is divided in to good faith (when the person did not know and could not know that he owned someone else's property) and unfair (when the person knew or should have known that the possession was unlawful).

The right to use is the right to take advantage of useful properties of things (e.g. to cultivate the land and get the crop, eat food, to wear clothes and shoes).

The right to dispose is the right to determine the legal or factual fate of the property (e.g. to sell, give, exchange, remodel, bequeath, etc.).

The totality of powers of the person gives grounds to believe that he is an owner of the respective property.

The owner does not only have ownership rights but also carries out certain *responsibilities.* In particular, the owner shall be obliged to maintain the property he/she owns unless otherwise is provided by the contract or law (Art. 322 of the Civil Code). Also risk of accidental destruction or accidental damage of property shall be born by its owner unless otherwise is provided in the contract or law (Art. 323 of the Civil Code).

The owner may not enjoy the ownership right in violation of the rights, freedoms and dignity of the citizens, interests of the society, deterioration of ecological situation and natural qualities of the land (Art. 319 of the Civil Code).

A characteristic feature of the ownership right is its steadfastness. No one can be unlawfully deprived of the right or restricted in its implementation. This is an important provision of the law (Art. 321 of the Civil Code), which allows individuals to protect their rights.

Forced alienation of the objects of the ownership right may be applied only as an exception for the reasons of public necessity on the ground and per the procedure established by the law and under the condition of preliminary and full compensation for its value, except cases of requisition under conditions of military or extraordinary situation followed by full reimbursement for its value (Art. 321, 353 of the Civil Code).

The ownership right is regulated by a complex of norms. Such norms regulate and establish social relations arising from the appropriation of wealth by citizens, legal entities and the state, provide equal rights and responsibilities from ownership, use and disposition of property to these entities.

These rules regulate the order of acquisition, exercising, use and disposal, cessation and protection of the ownership right. Such norms constitute a legal institution most of which are the rules of the civil law, but part of this institution is made of legal norms of other branches of law that regulate and protect the affiliation of material benefits to specific individuals – constitutional, criminal, financial, administrative and others.

Property is an economic category, which is one of the manifestations of public relations for the appropriation of wealth.

There are the following forms of property (ownership):

1) *the property of the Ukrainian people* – land, its mineral resources, atmospheric air, water and other natural resources located within the boundaries of Ukraine, natural resources of its continental shelf, exclusive (marine) economic zone shall be the objects of the ownership right of the Ukrainian people;

2) *private property* – property and nonproperty benefits of a particular individual or legal entity (houses, vehicles, money, securities, intellectual creations and other property of the consumer and industrial purposes). Physical and legal persons may be the owners of any property except for specific types of property that cannot be in their possession pursuant to the law;

3*) collective property* – property belonging to a particular community and necessary for its functioning (property of collective enterprises, cooperatives, lease or joint-stock companies, a business entity, a business association, a trade union, a political party or other public organizations, religious organizations, etc.);

4*) state property* – property, including funds needed for the state to perform its functions (for example, an integrated energy system, information systems, communications, public transport, the state budget, etc.). State ownership is divided into national and communal (the ownership of administrative and territorial units).

Thus, the **ownership right** *is the opportunity assigned to the owner to the extent permitted by law, to possess, use and dispose of property (means of production and consumption), at his discretion and in his own interest.*

Questions for self-assessment

1. What relationships are regulated by the civil law?

2. What sources of the civil law do you know?

3. What method does the civil law use and what are its specific features?

4. What are the elements of the civil law system?

The practical task

Arrange the sources of the civil law in the descending order of their legal force (from the highest legal force to the lowest one):

a) the decision of the court about compensation for undelivered products;

b) the Resolution of the CMU dated November 10, 2010 No. 1025 "On the Approval of Samples of Documentary Records of the Civil Status, Description and Form of Certificates of State Registration of the Civil Status";

c) the contract between the publisher and the author S. Petrov;

d) the Constitution of Ukraine;

e) the Joint Stock Companies Law of Ukraine;

f) the decision of the local self-government about the regulation of outdoor advertising;

g) the charter of the private enterprise;

h) the tutorial "Civil Law" by A. Dzera;

i) the Civil Code of Ukraine;

j) the Decree of the President of Ukraine "About the Introduction of a Common Policy in the Sphere of Entrepreneurship";

k) the rules of internal labor regulations of the company "ABC".

9. The subjects of civil law

9.1. The subjects of civil law

The subjects of civil relations are its participants. According to Art. 2 of the Civil Code, **participants in civil relations** are:

- natural persons (individuals);
- legal entities;
- the state of Ukraine;
- the Autonomous Republic of Crimea;
- territorial communities;
- foreign states;
- other subjects of the civil law.

Thus, participants are **entities of private law**: 1) *individuals* – citizens of Ukraine, foreigners and stateless persons; 2) *legal entities* – domestic, foreign, domestic with foreign investments etc., natural persons and legal entities also named "persons"; 3) **entities of public law** – the state of Ukraine, the Crimea, foreign states and other social and public subjects. Social and public formations can be subjects of civil law, but according to the Civil Code they cannot be "persons".

In every kind of legal relations there are at least two subjects (participants). Otherwise civil relations are absent as relations between persons, and consequently, there can be no legal relations.

Participants in legal relations, as it has been mentioned, can have rights and then they can be named "entitled subjects" (in obligations they are also named "creditors"). For example, the owner of property is the entitled person because the ownership right as a legal category can be defined as a complex of civil rights of a certain person to possess, use, control and so on this property. Other participants in legal relations, who have some obligations, are called "obliged subjects" ("debtors"). For example, a person who caused damage is always an obliged person because the content of obligations arising from damage is the victim's right to compensation and the obligation of the offender is to compensate for the caused damage.

In most cases, participants in civil relations simultaneously have both rights and responsibilities, that is they act as both obliged and entitled entities. For example, in the contract of sale the seller is obliged to transfer the sold thing, but is entitled to receive its cost. The buyer, in turn, has the right to demand the transfer of the purchased item, but is obliged to pay its price.

A necessary condition for participation in civil relations is **civil legal personality** that is social and legal capacity (ability) to be a participant in civil relations.

Civil legal personality is the natural right of an individual. Therefore, in terms of the private (civil) law, it is a legal opportunity. On the other hand, it cannot be implemented outside society and recognized as a social opportunity.

Thus, the natural prerequisites of legal personality are a complex of legal rules and norms of natural law; its social prerequisite is the existence of society. The legal prerequisites of legal personality are legal norms of civil legislation. Formal legal prerequisites are the norms established in the acts of civil legislation.

The elements of legal personality are legal capacity and capability.

Legal capacity is the ability of a subject to have civil rights and obligations. All natural persons shall be able to have civil rights and duties (legal capacity). Legal capacity of a natural person arises when s/he is born. Legal capacity of a natural person shall stop at the moment of his/her death.

A natural person who is able to perceive and control his/her actions shall have legal capability. **Legal capability** of a natural person is his/her capability to obtain civil rights and independently exercise them by their own actions, as well as capability to create civil duties by their own actions, perform them independently and bear responsibility in the case of their non-fulfillment.

9.2. The concept and content of the civil legal capacity, full and partial capability of citizens

In contrast to legal capacity, legal capability is connected with the implementation of voluntary actions by a citizen that involves the achievement of a certain level of mental maturity. The criteria are age and the mental health status.

The law envisages several **kinds of capability of natural persons:**

1) partial legal capability of a natural person who is under fourteen years old;

2) partial (incomplete) legal capability of a natural person of the age from fourteen to eighteen years;

3) full civil capability.

Full civil capability. A natural person who attained the age of sixteen years (full legal age or majority) shall have full legal capability (Art. 34 of the Civil Code of Ukraine).

The specified age limit may be lowered in two cases: a) registration of marriage by a person younger than sixteen years (Art. 34 of the Civil Code of Ukraine); b) granting full legal capability by the decision of the guardianship and trusteeship body (Art. 35 of the Civil Code of Ukraine).

In the case of marriage registration of a natural person under full age, he/she shall acquire full legal capability since the moment of his/her marriage registration. In the event of marriage termination prior to the moment when the natural person attains the majority, the full legal capability acquired thereby shall be held.

The marriage age for men and women is 18 years (Art. 22 of the Family Code of Ukraine). Upon the application of a person who has attained the age of 14 years, a court may grant him/her the right to marry if it is found than such a marriage satisfies his/her interests.

Full legal capability **may be granted** to a natural person who has attained the age of sixteen years and works under *the labor agreement* as well as to a minor *registered as a baby's mother or father.*

Full civil legal capability shall be granted by the decision of the guardianship and trusteeship body according to the application of the interested person and the written approval of parents (adoptive parents) or guardians and in the case of absence of such approval, full legal capability may be granted by court decision.

Full civil legal capability may be granted to a natural person who has attained the age of sixteen years and wishes to engage in *entrepreneurial activity*. Such person may be registered as an entrepreneur in the case of availability of a written approval of his/her parents (adoptive parents), a guardian or a guardianship and trusteeship body.

In the case of termination of the labor contract, individual entrepreneurship and parenting the full civil legal capability granted to minors remains.

Partial civil legal capability of individuals who have not reached 14 years (Art. 31 of the Civil Code of Ukraine calls them "minors").

The natural person who has not attained the age of fourteen years (a child) shall be entitled:

1) to take *independently inessential social legal actions* (a legal action shall be regarded inessential if it meets social needs of a person, complies with his/her physical, moral and social development and relates to the object with low value);

2) *to exercise his/her nonproperty rights to the outcomes of intellectual and creative activity* protected by law.

All other transactions are void and do not give rise to legal consequences for them. However, upon the demand of a concerned person, a court may acknowledge such transaction valid in the case it has been established that the transaction was concluded for the benefit of the infant. In the case of absence of such approval, the transaction shall be void (Art. 221 of the Civil Code of Ukraine).

A child shall not be responsible for the losses inflicted thereby. A minor does not bear civil liability for the damage he caused. This is because young

people still cannot fully evaluate their actions and control them, and therefore cannot be recognized guilty and liable for the offense. The responsibility for the actions of minors is placed upon their parents, adoptive parents, guardians who are guilty of not providing proper control or improper upbringing the children. Damage inflicted by an infant (under fourteen years old) shall be indemnified by his/her parents (adopting parents), tutors or the other physical person legally authorized to educate the infant, unless they prove that the damage does not result from their negligent attitude to the guardian responsibilities or avoidance from educating and taking care of the infant (Art. 33, 1178 of the Civil Code of Ukraine).

Partial legal capability of a natural person of fourteen through eighteen years old (Art. 32 of the Civil Code of Ukraine).

In addition to legal actions provided by Art. 31 of the Civil Code, a natural person of fourteen through eighteen (a minor) shall be entitled:

1) to dispose independently of his/her earnings, fellowship or other incomes;

2) to exercise independently his/her rights to the outcomes of intellectual and creative activity protected by law;

3) to become a participant (a founder) in legal entities unless it is prohibited by law or the constituent documents of the legal entity;

4) to conclude independently a bank deposit (bank account) agreement and dispose of his/her deposit entered in his/her favor (costs on his/her account).

The minor shall take other legal actions by the consent of his/her parents (adoptive parents) or guardians.

Taking legal actions by a minor with respect to transportation means or real estate must be acknowledged by the notarized approval of parents (adoptive parents) or a guardian and by permission of a guardianship and trusteeship body.

9.3. Restriction of a natural person's legal capability. Recognition of a natural person's legal incapability

If there are sufficient grounds with the application of the parents (adoptive parents), the guardian, the guardianship authority in accordance with part 5, Art. 32 of the Civil Code, the court *may limit the right of a minor to dispose independently of his/her earnings, fellowship or other incomes or deprive him/her of that right*, that is, apply the **restriction of legal capability of a natural person**.

Such grounds may usually be manifestly reckless disposal and use of funds, for example, buying alcohol, gambling, etc. According to the Civil Code, the court may restrict a natural person's legal capability if **he/she abuses alcohol, drugs, toxic substances, gambling etc**. whereby bringing himself/herself or his/her family as well as other persons he/she has to maintain by law into *hard circumstances.*

The court may also restrict the legal capability of a natural person with **mental disorder** that materially influences his/her capability to perceive and (or) control his/her actions. A natural person's legal capability shall be restricted since the effective date of the court decision thereon.

A natural person with the restricted legal capability may take *only inessential legal actions.* Legal actions regarding the disposal of property and other legal actions that lap over these inessential legal actions shall be taken by a natural person whose legal capability is restricted *by the approval of his/her guardian.* So, without the consent of his guardian a natural person with restricted legal capability **cannot**:

a) sell, gift, bequeath, exchange, buy property and perform other transactions on the disposal of property, with the exception of inessential legal actions;

b) independently receive a salary, fellowship or other incomes (royalties, remuneration for discoveries, inventions, etc.). Getting and disposal of the earnings, pensions, scholarships and other income of the person whose civil legal capability is limited, is carried by the trustee (guardian).

The guardian may provide a written permit to the natural person with the restricted legal capability to receive his/her earnings, pension, fellowships and other incomes and dispose thereof. The guardian's refuse to give the approval for legal actions that lap over these inessential legal actions may be appealed by the natural person with the restricted legal capability in the guardianship and trusteeship body or the court.

A natural person with the restricted legal capability shall incur **independent liability** *for breaching the agreement* concluded thereby with the guardian's consent and for the *damages inflicted thereby to any other person*.

If a minor has not enough property to indemnify for losses from breaching the agreement concluded with the approval of his/her parents (adoptive parents) or guardians, his/her parents (adoptive parents) or guardians bear the additional liability. Obligation of the parents (adopting parents), a tutor, an institution legally authorized to perform the tutor functions

towards the juvenile shall be terminated, once the juvenile that inflicted damage reaches legal age or becomes a holder of the property sufficient to indemnify for the damage.

In the **case of recovery** of a natural person with the restricted legal capability or improvement of his/her mental health, that has fully restored his/her capability to perceive and control his/her actions, the *court shall restore his/her legal capability*. Also court shall restore his/her legal capability if a natural person **stops using alcohol, drugs, toxic substances etc**. The guardianship over the natural person shall be terminated on the basis of the court decision regarding the restoration of his/her legal capability.

The procedure for restriction of a natural person's legal capability and the procedure for the restoration of legal capability of a natural person with the restricted legal capability shall be specified by the Code of Civil Procedure of Ukraine.

A natural person may be recognized by the court as legally incapable if he/she **is not capable to perceive and (or) control his/her actions** due to chronic and stable mental disorder.

If the court refuses to allow the application for the recognition of a natural person's legal incapability and it appears that the request has been laid unfair without any serious reason, the natural person who was inflicted the moral damage shall be entitled to require the indemnification therefor from the applicant.

A natural person shall be recognized legally incapable from the effective date of the court decision thereon.

Legal consequences of recognizing a natural person's legal incapability are as follows:

- the natural person shall be placed in ward;
- the legally incapable natural person shall not be entitled to take any legal actions;
- the guardian shall take legal actions on behalf and in favor of the legally incapable natural person and shall bear liability for the damage inflicted by the legally incapable natural person.

By claim of the guardian or the guardianship and trusteeship body, the **court shall restore** the legal capability of a natural person recognized as legally incapable and terminate the guardianship if it is fixed that a *natural person's capability to perceive and control his/her actions has been restored* as a result of his/her recovery or the improvement of his/her mental health.

9.4. The procedure for creation, reorganization and liquidation of a legal entity

A **legal entity** is an organization established and registered according to the procedure specified by the law, may be created by integration of natural persons and (or) the property and is vested with legal capacity and capability and may act as a plaintiff or a defendant in the court.

The *features* of the legal entity are organizational unity; publicity of its origin and termination; it is an association of persons and property or an association (selection) of property only; it has general (universal) capacity and property; can bear self-responsibility; operates in public circulation with its own name.

Legal entities can be differed into several kinds.

1. Depending on the order of their creation, they are divided into *legal entities of private law*, which are created by the founders of the will on the basis of constituent documents and *public legal entities*, which are created by the administrative act of the President, the public authority, the authority of the Autonomous Republic of Crimea or local government (e.g. state and municipal authorities, a public institution of higher education, a state library, and others).

2. Depending on the type of constituent documents, legal entities are divided into: 1) legal entities whose constituent document is charter (limited liability companies, joint stock companies); 2) legal persons whose constituent document is the memorandum of association; 3) legal persons whose constituent document is the constitutive act; 4) legal entities whose founding document is the sole statement (memorandum).

3. Based on the purpose, legal entities are divided into: business and non-profit organization.

4. Depending on the legal regime of property, all legal entities are divided into: legal entities – owners of property (all private organizations); legal entities – non-owners of the property, who, however, have other proprietary rights (public agencies, state enterprises, state-owned joint-stock companies). Non-owners of property – that is legal entities of public law.

5. Depending on the composition of the founders, legal persons are divided into:

- legal persons whose founders can only be a state of the ARC, territorial communities in the face of the competent authorities (a state-owned enterprise, a utility);

- legal persons whose founders can only be natural persons (religious organizations, associations of individuals, creative unions);
- legal persons whose founders may only be legal entities (public and corporate private pension funds);
- legal persons whose founders can be any person who has both natural persons and legal entities (business companies).

6. According to the quantitative composition of the founders of different legal forms legal entities are divided into: legal entities formed by several persons (entities) and entities created by one person (a company of one person – a joint stock company with limited or additional liability).

7. According to the organizational features entities are divided into simple and complex. The simple entities are those that arise from the ownership of individuals, on the basis of the property of individuals and entities on the basis of state ownership when participating in civil relations separates part of their property to create a legal entity. Legal entities are complex when they arise as a result of combining of entities (associations of consumers and industrial cooperation, association, creating associations of individuals).

8. Depending on the availability of economic dependence, entities are divided into: the main entity and the dependent entity (associated entities).

9. The peculiarities of the legal status of legal entities give ground to divide them into: national (residents) – established and operating in accordance with the laws of Ukraine; foreign (non-residents), created by legislation other than the legislation of Ukraine, although carried out in the territory of Ukraine in a certain amount of economic activity.

This classification can coexist with others, which may be based on other criteria.

Civil legal personality of a legal entity is its ability to be the subject of civil relations which is composed of the civil legal capacity and capability of that person.

Legal capacity of a legal entity is its ability to have civil rights and obligations arising from the moment of creation of the legal entity and terminating from the date of entry into the Unified State Register of record about its termination. A legal entity acquires legal capacity and capability from the moment of registration and gets a possibility to acquire civil legal rights and obligations, realizing them through its bodies.

According to Art. 91 of the Civil Code of Ukraine a legal entity may have the same civil rights and obligations (legal capacity) as a natural person other than those, which by their nature may belong only to a human.

Traditionally there are such ways of creation of legal entities: administrative and normative.

Questions for self-assessment

1. What is legal capacity and capability?
2. What subjects of civil law do you know?
3. What kinds of civil legal capability do you know?
4. What are the features of a legal entity?

The practical task

16-year old Peter, who worked in the company "Garant", spent the major part of his salary on drink. He wore poor clothes, worn out shoes, had no money for medicines, and sometimes for food. Peter's father died, and his single mother had a very small income. Therefore she made a statement to the court about limiting her son in capability. Peter was sure that he would not be limited in capability. First, it is possible to limit the capability of the person who has full capability. Secondly, he had no family, which he could put in a difficult financial situation. Are there any grounds for limitation of Peter's capability?

10. Deals. Representation in the civil law

10.1. The notion and types of deals

A deal (or transaction) is the most common legal fact with the help of which participants in civil legal relations acquire, change or terminate rights and obligations (Art. 11, 202 of the Civil Code of Ukraine). Deals are characterized by a certain set of characteristics, which makes it possible to separate them from other legal facts.

Firstly, a deal is always an action of individuals characterized by *strong will*. This differs it from such legal facts as events, which occur beyond the influence of a strong-willed person.

Secondly, a deal always has a *target aimed at the achievement of a legal result* which is to acquire, change or terminate civil rights and obligations.

Thirdly, a *deal is an action of the subjects of civil law, they are always equal persons*. The possibility of such entities to make deals is a part of their civil capability.

Fourthly, a deal is always a *legitimate action*. On this basis a deal differs from wrongful actions which do not comply with the requirements of law.

A **deal** *shall be an action of a person aimed at the acquisition, changing or termination of civil rights and obligations.*

Depending on the number of people expressing their will (parties to the deal), and the direction of their will, they are divided into *unilateral, bilateral or multilateral (contracts).*

A *unilateral deal* shall be an action of one party, which may be represented by one or several persons. Examples of deals are: public promise of a reward, issuing a power of attorney, making a will, rejection of the right of ownership, etc. During concluding a deal the will comes from one party which can be represented by several persons (for example, issuing a power of attorney by two people, a joint will of spouses). A unilateral deal may create obligations only for the person that made the deal and may create obligations for other persons only in the cases established by the law or by the agreement between these persons.

A *bilateral deal* is a concerted action of two parties. Such deals are called contracts (e.g. rent, gift agreements and property management agreements, sales contract, etc.). Each of the parties to the bilateral deal expresses its will that corresponds to the will of the other party. As in the unilateral deal any of the parties to the bilateral one may also be represented by several persons.

A multilateral deal shall be a coordinated action of two or more parties. It is a kind of contract which has at least two parties. All parties to a multilateral deal (even if there are two of them) try to achieve the same goal, as opposed to a bilateral deal, each of which tries to reach only its goal). An example of a multilateral deal is an agreement on the establishment of a limited liability company, a simple partnership agreement, a joint venture agreement. So, by the conclusion of a joint venture agreement on building a well by the owners of the neighboring land parcels they get a possibility to meet their own demand for the use of water. When creating a business entity with the conclusion of the respective agreement, which is a multilateral deal in essence, all founders acquire the right to participate in this society.

Depending on the moment when the bilateral or multilateral deal is concluded, they are divided into consensual and real.

A consensual deal is a deal concluded with the parties reaching an agreement with respect to its essential terms and conditions in an appropriate form. Consensual transactions, in particular, are contracts of sale, rent, work contract and other. The transfer of things or committing another action in consensual transactions characterizes the process of their implementation.

A real deal (from the Latin *Res* – thing) is a deal which is concluded with the transferring of a thing, or committing other acts. To make a real deal, you must have two legal facts: a) the agreement between the parties with respect to the essential conditions; b) transfer of a thing from one party to the other or committing another action. In particular, the real deals are an insurance contract, a bank deposit, a loan.

10.2. General requirements necessary for validation of a deal

For occurrence of legal consequences a deal is aimed for, it is necessary for it to be valid, i.e. to meet the requirements of the legislation.

1. The contents of a deal *cannot contradict the Civil Code, other acts of civil legislation and moral principles of the society*. The content of the deal means the totality of the conditions set forth therein.

2. A person that effects a deal *shall have a required scope of civil legal capability.* These are primarily individuals who have full civil legal capability (full civil legal capability, minors who got or are granted full civil legal capability) and have the possibility to make any deals.

3. Expression of the *will* of a participant to a deal *shall have to be free and shall correspond to his/her inner volition*. It is important that the process of formation of the will should take place without the influence (pressure) of external circumstances or factors which deform it. That is, it is necessary that expression of the will should be expression of the true will of the party (parties) without distortion. Otherwise, there are no preconditions for characterizing the actions of the subject as a deal, and then the rules on invalidity of a deal should be applied. A deal with the absence of free will or when will does not correspond to the party's inner volition takes place in the case of an error, deception, violence, malicious agreement of a representative of one party to the other party to the deal etc.

4. A deal shall be effected in the *form established by the law.* Compliance with this requirement is necessary for the accurate establishment

of rights and obligations of the participants in the deal, their proper perception by the deal parties and third parties, simplifying the process of possible disputes. The legal consequences of noncompliance with the form of the deal are established by Art. 218 – 220 of the Civil Code.

5. A deal shall be *aimed at realistic occurrence of legal consequences* stipulated by it. This feature allows us to distinguish deals from other legal facts. The lack of aim of the deal to achieve certain legal consequences, in particular making a deal without a real intention of their occurrence or with the intent to conceal the desired legal result, causes its invalidity (Art. 234 – 235 of the Civil Code of Ukraine).

6. A deal effected by parents (adoptive parents) *cannot contradict the rights and interests of their infants, minors or disabled children*. It is assumed that in making any deals parents should consider the rights and legal interests of children.

7. The place of making a deal. The place of making a deal is established in the deal by the party (parties).

A deal shall be legitimate, unless the law directly establishes its invalidity or the court invalidates it.

Deals can be effected in either **verbal** or **written form**. The parties shall have the right to choose the form of deal, unless otherwise established by the law. A deal for which the law does not prescribe a mandatory written form, shall be considered concluded, provided the behavior of the parties witnesses their intention prior to occurrence of the appropriate legal consequences.

In cases established by an agreement or law, the intention of the party to conclude a deal may be *expressed by its silence*.

Deals can be concluded in the **verbal form** in the case they are *fully performed* by the parties at the moment of their conclusion, except for deals subject to notarization and/or state registration, or those for which non-observance of a written form entails their invalidity. A deal is considered as concluded in verbal form if the will of the parties is expressed verbally (including the sign language) directly between the parties, and by means of telephone, video and others kinds of communications.

The ability to conclude a deal in the verbal form is attributed to the fact that in this case the time of conclusion and execution of a relevant deal is the same, which results in the termination of obligations arising under such agreement. In particular, this situation occurs in the case of conclusion of a retail purchase and sale contract, by which the simultaneous payment of

the full purchase price to the seller and the transfer of the purchased goods to the buyer is implemented.

A legal person that paid for goods and services based on a verbal deal with another party shall be issued a *document* which certifies the grounds for payment and the amount of the funds received. That document can be a check, a receipt, an invoice.

Deals to perform a contract concluded in writing may, by the parties' agreement, be concluded in the verbal form, unless this contradicts the contract or the law.

2. The following deals shall be concluded **in writing**:

1) deals between legal entities;

2) deals between a legal and a natural person, except for deals that can be concluded in the verbal form and they are fully performed by the parties at the moment of conclusion;

3) deals of natural persons between themselves for the amount 20 times exceeding by the nontaxable minimum income of citizens;

4) other deals in respect thereof a written form is established by the law (for example, a deal on security of fulfillment of the obligation should be concluded in the written form).

Part 1 of Art. 207 of the Civil Code of Ukraine establishes that a deal is committed in writing if its content is recorded in one or more documents, letters, telegrams exchanged between the parties.

The foregoing provisions concerning the requirements for writing, apply to those deals, which should be notarized.

In accordance with part 1 of Art. 209 of the Civil Code of Ukraine a deal made in writing, shall be notarized only in cases established by law or by agreement of the parties. Notarization can be only in the text of such a deal, which meets the general requirements established in Art. 203 of the Civil Code of Ukraine.

10.3. The recognition of invalidity of a deal and legal consequences of invalidity of a deal

A ground for **invalidity of a deal** shall be non-compliance of a party (parties) with the requirements established at the moment of concluding the deal.

A deal shall be invalid if its invalidity is established by the law (a void deal). In this case, invalidation of the deal by the court shall not be required.

In the cases established by the Civil Code of Ukraine a void deal may be found valid by the court.

An invalid deal does not entail legal consequences, except for those related to its invalidity. In the case of invalidity of a deal, each party shall be obliged to return in kind to the other party everything it has acquired in pursuance of the deal, or, if such return is impossible, including the cases where the acquisition consists in the use of property, work performed, or services provided, to reimburse the value of the acquired things at the prices existing at the moment of reimbursement.

Where, in connection with conclusion of an invalid deal the other party or a third person incurred losses, they shall be subject to reimbursement by the guilty party.

A **sham deal** shall be the deal effected without intention to establish the legal consequences stipulated by this deal. A sham deal shall be invalidated by a court.

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

10.4. The notion and grounds for representation

Representation shall mean legal relations in which one party (a representative) is obliged or entitled to conclude a transaction on behalf of the other party which it represents (part 1 of Art. 237 of the Civil Code). The representative is not a party of the deal, and he provides representation by implementing the powers given to him on behalf of and in the interests of the person he represents. A representative may be authorized to conclude only those transactions that the person whom he/she represents has the right to conclude. This rule relates to representation which arises on the basis of a contract or a legal entity act. It does not apply to the cases of legitimate representation.

Representation shall arise on the *grounds* of:

1) a contract;

2) a law;

3) an act of a body of a legal person;

4) or on other grounds established by acts of civil legislation.

Representation under the law implies the following: 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 the cases established by the law, other persons may be legitimate representatives.

A commercial representative shall be a person who permanently and independently represents entrepreneurs in the conclusion of contracts in the sphere of businesses.

Representation based on a contract may be performed by power of attorney.

A representative may not conclude a transaction, which, according to its contents, may be concluded *only personally* by the person whom he/she represents. Thus, a person can make a will or refuse inheritance, refuse the ownership right with respect to a real estate, etc. only by himself.

The purpose of representation is committing deals by a representative in the interests of the person he represents.

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

Representatives are legal entities or individuals who have competence for committing legal actions on behalf of the party which he/she/it 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, where established by the agreement or law between the person that is represented and the representative, or in the case the representative was forced to do so to protect the interests of the person whom he/she represents.

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

10.5. The power of attorney of a legal person: the term and form

The power of attorney shall be a written document issued by one person to another for representation to the third parties. A power of attorney

to conclude a transaction by a representative may be granted by a person that is represented (by a trustee) directly to a third person.

The power of attorney is a unilateral deal by nature. As a general rule, the power of attorney may be only issued by capable persons. Persons who have not full legal capacity (for example, minors) may issue a power of attorney to commit the deals that they have the right to make.

As a rule, the power of attorney shall be drawn up in writing. The power of attorney on behalf of a legal entity shall be binding in the written form, stamped and sealed by the issuing authority or other person authorized by the constituent documents (Art. 246 of the Civil Code).

Depending on the scope of the powers granted to the representative a person, there are three types of the power of attorney: general, single-time and special.

The general power of attorney authorizes the representative to commit a wide range of deals and related legal actions (for example, there is a general power of attorney issued by the head of a branch of a legal entity).

The special power of attorney authorizes the commission of legal actions or deals of a certain type. If the one who represents the authority has to carry out any single deal or legal action, the special power of attorney in this case will be referred to as a single-time power of attorney (sometimes separated into an independent view of the power of attorney).

A single time power of attorney is issued to the representative to sign a deal. After he has concluded the deal, the single-time power of attorney expires.

The power of attorney, as well as any other deal must comply with all the requirements of their validity. In particular, the provisions of the Civil Code define certain requirements for the form of the power of attorney. According to part 1 of Art. 245 of the Civil Code, it must conform to the form required by law for making deals, such as the power of attorney for the sale of real estate must be notarized. A notarized power of attorney shall be issued by way of substitution (Art. 2, Art. 245 of the Civil Code). According part 3 of Art. 245 of the Civil Code, the power of attorney of a soldier or other person who is being treated at a hospital, health centers and other military hospital is equal to the notarized power of attorney and may be certified by the chief of that institution, his deputy, or the senior doctor on duty.

The term of the power of attorney shall be established in it. If the term of the power of attorney is not indicated, it shall remain effective till its

termination. The term of the power of attorney issued per the procedure of reassignment may not exceed the term of the main power of attorney based on which it was issued. A power of attorney without indication of the date of its execution *shall be void*.

Questions for self-assessment

1. What kinds of deal do you know?
2. For what deals does the Civil Code of Ukraine establish the written form with mandatory notarization?
3. What are the grounds for invalidity of a transaction?
4. What legal consequences occur if a transaction or any of its parts is recognized invalid?

The practical task

Sidorov sold a painting of an unknown artist to Sergiienko. The painting was estimated at 300 UAH. A year later, it became clear that the picture was painted by Aivazovskyi and its price is much higher. When Sidorov found out that, he started to demand recognition of the deal invalid and returning it to him or paying its actual price.

1. What kind of deal is considered in this task?
2. Characterize it based on the number of parties, presence of counter material compensation, etc.
3. What form is provided for that deal?
4. Is any condition of validity of the deal breached in this situation?

11. The law of obligation

11.1. The notion of civil obligation

According to the business dictionary, obligation is liability or duty to do something or refrain from doing something under the terms of a contract, such as the obligation of the borrower (the obligor) to pay back the lender (the obligee) under the terms of the loan agreement. Obligations usually involve a penalty for nonfulfillment.

The definition of obligation established in the Civil Code has some special features. An **obligation** shall be a legal relation where one party (the debtor) shall be obliged to perform an action (to transfer property, to do a job, to render service, to pay money etc.) to the benefit of the other party (the

creditor) or to abstain from a certain action, while the creditor shall have the right to demand that the debtor fulfill his obligation (Art. 509 of the Civil Code of Ukraine).

As usual, legal relations concerning obligations include the following elements: the subjects (actors), the object and the content.

The subjects/actors in the obligation are its participants called the **debtor** and the **creditor**. They can be individuals and legal entities.

The object of the obligation is what rights and obligations are aimed at, i.e. certain actions regarding things, money, services. Such actions can be: 1) transferring property; 2) doing a certain job; 3) rendering some services; 4) paying money (remuneration of damages), etc.

The content of obligations is a complex of subjective rights and obligations of its participants. Since obligations are legal relations of material nature, their content is made up of subjective rights and duties of material nature too.

The grounds for the emergence of civil rights and obligations are legal facts (one or several).

They include the following:

1) contacts and other legal deals;

2) creation of literary and art works, inventions and other outcomes of intellectual and creative activity;

3) inflicting property (material) and moral damage to the other person;

4) administrative acts (for example, the issuance of an order by the state administration, with the result that there appears an obligation to conclude a contract of tenancy);

5) other actions of citizens and organizations;

6) certain events with civil legal consequences;

7) a court decision.

Parties in obligation are creditor and debtor.

The creditor is a person who has a right to demand that are certain actions performed or refrained from. That person trusts his counterpart, he credits him, that is why he is called the creditor.

The debtor is the opposite side in the obligation. He must perform certain actions or refrain from them. This person has a debt to the creditor, so he is called the debtor. The creditor is commonly called an active party in the obligation, and the debtor is a passive party.

Typically, each of the parties of relations dealing with obligations is represented by one person. But the legislator admits participation of one or several people simultaneously in the obligation on the creditor or the debtor party. Such obligations are called obligations with a multiplicity of persons.

There are active, passive and mixed multiplicities of persons.

Active multiplicity is an obligation with multiple creditors; the passive one is that with several debtors; the mixed multiplicity is such where persons on the part of the debtor and the creditor participate in the obligation.

The legislator allows for replacement of persons in the obligation.

The creditor in the obligation may be replaced by another person as a result of:

1) transfer of his rights to another person by transaction (recession of the right of claim);

2) succession;

3) fulfillment of the debtor's obligation by a guarantor or a mortgager (property guarantor);

4) fulfillment of the debtor's obligation by a third person. The creditor in the obligation cannot be replaced if so is specified in the contract or law.

So, for example, the creditor cannot be replaced in the maintenance obligations, in the obligations to compensate for damage caused to human health.

The debtor in the obligation may be replaced by another person (debt transfer) only upon the creditor's consent. The debt is transferred to a new debtor, but the guarantee or collateral established by another person shall be terminated after the replacement of the debtor, unless the guarantor or the mortgager agrees to secure the fulfillment of the obligation by a new debtor.

11.2. Ensuring the fulfillment of obligations

The ways to ensure the fulfillment of obligations is a set of measures by which parties in the civil law relations affect each other in order to properly perform economic tasks under the contract.

Ensuring the fulfillment of obligations aims:

1) to warn the potential offender about the negative consequences that can occur in the case of nonperformance or improper performance of the contractual obligations;

2) to create the possibility for the creditor to satisfy his interest in the event of nonfulfillment of the obligation;

3) to eliminate the negative effects, which can occur for the creditor because of nonfulfillment of the obligation.

The Civil Code of Ukraine stipulates that fulfillment of obligations may be secured by:

1) forfeit;

2) bailment;

3) guarantee;

4) collateral/pledge;

5) retention;

6) deposit (down payment).

The above ways to ensure the fulfillment of obligations have a common goal: to give the creditor an additional opportunity to obtain what is due to him under the obligation.

The **forfeit (penalty, fine)** shall be the amount of money or another property, which the debtor is obliged to deliver to the creditor in case the debtor violates his obligation.

The forfeit can be established as a fixed amount, a percentage of the total amount of nonfulfilled obligation or its part, in the form of an additional payment.

Depending on the grounds of establishing they distinguish:

1) a legal forfeit, i.e. provided by a specific normative act;

2) a contractual forfeit determined by the parties themselves in the contract.

The **penalty** shall be a forfeit calculated as a percentage of the sum of the unfulfilled or unduly fulfilled obligation.

The **fine** shall be a forfeit calculated as a percentage of the sum of the untimely fulfilled obligation for each delayed day.

The **bailment**. The bail under the bailment agreement shall be a warrant to the debtor's creditor for the fulfillment of his obligation.

The bail shall be responsible to the creditor for violation of the obligation by the debtor. A bailment may secure either full or partial fulfillment of the obligation. One or several persons may act as a bail.

The **guarantee** is a means by which a bank, another financial institution, an insurance company (guarantor) shall guarantee to the creditor (beneficiary) the fulfillment of the obligation by the debtor (principal). The guarantor shall be liable to the creditor for violation of the obligation by the debtor.

The guarantee is a bilateral contract in which one entity (the guarantor) undertakes to bear the financial responsibility to the creditor for the improper performance of obligations by the debtor.

There are three entities in such relations: the creditor, the debtor and the guarantor.

The **deposit** shall be the amount of money or movables issued to the creditor by the debtor against the payments due on the payment agreement to confirm the obligation and secure its fulfillment.

Unless it is specified that the amount of money paid against the debtor's due payments is a deposit, it shall be deemed an *advance payment*.

If an obligation is violated through the debtor's fault, the deposit shall be left with the creditor. If an obligation is violated through the creditor's fault, he shall be obliged to return the deposit to the debtor and pay additionally the amount of money equal to the deposit or its value. The party guilty of the violation of the obligation shall be liable to reimburse to the other party for the losses in the amount they exceed the size (value) of the deposit, unless otherwise is established by the agreement.

In case the obligation terminates prior to its fulfillment or due to impossibility to fulfill it, the deposit shall be subject to return.

Against the **pledge** the creditor (pledgee) shall have the right, in the event the debtor (pledgor) does not fulfill the obligation secured by the pledge, to get satisfaction at the expense of the property in pledge in the priority order as against other creditors of this debtor, unless otherwise is specified by the law (the lien).

A pledge arises based on the agreement, the law or the court decision. Any property (a thing, securities, property rights) that can be alienated by the pledgor and can be seized may be a subject of pledge.

Retention. In the case of the debtor's nonfulfillment in time of his obligation to pay for the object owned by the creditor, or to compensate to the creditor for the expenses thereof and other losses, the creditor that lawfully owns the object eligible to transfer to the debtor or to another person indicated by the debtor, shall have the right to retain the object until the debtor executes his obligation.

Retaining the object may secure other claims of the creditor, unless otherwise is established by the agreement or law.

The creditor shall also have the right to retain the object in the case a third person acquired the rights to it that had arisen after the transfer of the object into the creditor's possession.

The creditor shall bear a risk of accidental destruction or damage of the retained object, unless otherwise is stipulated by the law. Also the creditor retaining the object shall be obliged to immediately inform the debtor hereof, he is responsible for the loss, destruction or damage of the retained object, if the loss, distraction, or damage occurred due to his fault. He doesn't have a right to use the retained object.

11.3. Termination of obligations

The obligation shall be terminated partially or in full on the grounds established by the agreement or law.

Termination of the obligation upon the request of one of the parties shall be admissible only in the cases established by the agreement or law.

The **grounds for termination** can be divided into two categories:

- termination because of one party or both parties' will (offsetting, transfer of the indemnity);
- termination of the obligation regardless the will of the participants (the death of the party).

Termination of the obligation because of the parties' will:

1) the basic ground for termination of the obligation is of this fulfillment obligation. The obligation shall be terminated by the proper fulfillment thereof;

2) termination of the obligation by offsetting. The offset of similar counter claims being matured as well as claims with nonidentified maturity or the maturity established by the moment of the claim, shall terminate the obligation. Counter claims may be set off upon the application of one of the parties;

3) the obligation shall be terminated upon the parties' consent to substitute the initial obligation by a new one between the same parties (novation). The novation shall not be admissible in respect to obligations to compensate the damage inflicted by disability, other damages to health or death, to pay the alimony and in other cases determined by law. The novation shall terminate additional obligations connected to the initial obligation, unless otherwise is stipulated by the agreement;

4) termination of the obligation by remitting the debt. The obligation shall be terminated as a result of the creditor's release of the debtor from his obligations (remitting the debt) unless this violates the rights of the third persons as to the creditor's property;

5) termination of the obligation by transfer of the indemnity. Upon the parties' consent the obligation shall be terminated as a result of the indemnity

(money, other property etc.) transfer to the creditor by the debtor. The parties shall determine the size, terms, and procedure of the indemnity transfer;

6) termination of the obligation upon the parties' consent. The obligation shall be terminated upon the parties' consent.

Termination of the obligation because of circumstances not depending on the parties' will:

1) termination of obligation through impossibility to execute it. The obligation shall be terminated through impossibility to execute it in connection with a circumstance, for which none of the parties is responsible;

2) termination of the obligation by uniting the debtor and the creditor in one person. Uniting the debtor and the creditor in one person shall terminate the obligation;

3) termination of the obligation by the physical person's death. The debtor's death shall terminate the obligation if it is inseparably connected with his personality and due to it cannot be executed by another person. The creditor's death shall terminate the obligation if it is inseparably connected with the creditor's personality;

4) termination of the obligation by liquidation of the legal entity. Liquidation of the legal entity (the debtor or the creditor) shall terminate the obligation, except for the cases when the law or other regulatory acts impose fulfillment of the obligation of the liquidated legal entity on another legal entity, especially the obligation to reimburse for the damage inflicted by disability, another damage to health, or death.

11.4. The notion, causes and conditions of responsibility for violation of the obligation

Violation of the obligation shall be its nonfulfillment or fulfillment with breaking the provisions determined by the content of the obligation (undue execution).

In case of violating the obligation the legal consequences determined by the agreement or the law shall come to effect, namely:

1) payment of the forfeit;
2) losing the deposit;
3) termination of the obligation due to unilateral refuse from the obligation if it is stipulated by the agreement or law, or cancellation of the agreement;
4) losing the subjective civil obligation;
5) reimbursement for damages.

The *forfeit* (penalty, fine) shall be the amount of money or another property, which the debtor is obliged to deliver to the creditor in the case the debtor violates his obligation. The subject of the forfeit shall be a sum of money, movable and immovable property. Payment (transfer) of the forfeit shall not release the debtor from fulfillment of his obligations in kind and release the creditor from the right for compensation of losses inflicted by failure to fulfill or by unduly fulfillment of the obligation.

The *deposit* shall be the amount of money or movables issued to the creditor by the debtor against the payments due on the payment agreement to confirm the obligation and to secure its fulfillment. If the obligation is violated through the debtor's fault, the deposit shall be left with the creditor. If the obligation is violated through the creditor's fault, he shall be obliged to return the deposit to the debtor and pay additionally the amount of money equal to the deposit or to its value. The party guilty of the violation of the obligation shall be liable to reimburse to the other party for the losses in the amount they exceed the size (value) of the deposit, unless otherwise is established by the agreement.

The *damages* include:

1) losses incurred by a person as a result of destroying or damaging a thing as well as expenses, which a person has incurred or must incur in order to restore its violated rights (real losses);

2) incomes that a person could have received under ordinary circumstances if his/her right had not been violated (the lost profit) (Art. 22 of the Civil Code).

Damages shall be indemnified in full unless any other extent of indemnification is provided by the agreement or law.

If a violating person receives incomes with this connection, the amount of the lost profit to be indemnified to the person whose right was violated may not be less than incomes received by the violating person.

Upon the request of the person who incurred the loss and in accordance with the circumstances of the case, the property damage may be indemnified in any other way, in particular, in kind (by transferring the thing of the same type and quality, repairing the damaged thing, etc.).

Civil responsibility can be:

1) contractual (partial, subsidiary, joint and several). *Joint and several* responsibility takes place in cases established by the contract or law, when

the creditor can claim to cover the damages from all debtors, or from each of them separately, completely or in part of the debt. An agreement or law may establish *additional (subsidiary)* responsibility of another person along with the debtor's responsibility. The creditor shall raise claim to the principal debtor prior to raising claim to the person that bears the subsidiary responsibility. If the main debtor refuses to satisfy the creditor's claim or the creditor did not receive in a reasonable term the response to the claim raised, the creditor may raise a full-sized claim to the person that bears the subsidiary responsibility;

2) non-contractual, which takes place in cases of causing property or nonproperty damage when the contract between the parties was not concluded.

The grounds for civil responsibility are:

- the essence of direct damage;
- unlawful behavior;
- a causal link between the unlawful behavior and the caused damage;
- guilt of the offender.

Moral damage shall be indemnified irrespective of the guilt of the state government, governmental body of the Autonomous Republic of Crimea, local self-government, physical or legal person that inflicted it:

1) if damage resulted from mutilation, other health injuries or death of a physical person due to the operation of the source of increased danger;

2) if damage to a physical person resulted from his/her illegal imprisonment, illegal bringing to criminal trial, illegal custody as a preventive measure or written undertaking not to leave a place, illegal retention, illegal administrative penalty in the form of arrest or compulsory work;

3) in other cases specified by law.

Questions for self-assessment

1. Give a definition of the obligation and grounds for its emergence.
2. What ways to secure the fulfillment of obligation do you know?
3. What causes and conditions of responsibility for violation of the obligation do you know?
4. What grounds for termination of obligations do you know?

The practical task

Antonov lended money to Petrenko secured by his own apartment for three years. However, a year later, when Petrenko returned only a part of the amount, there was a flood and Petrenko's house was significantly damaged.

When Antonov came to know that, he applied to Petrenko for repayment of the loan amount ahead of time.

Is Antonov's demand legitimate?

12. The basics of the family law of Ukraine

12.1. The general characteristics of the family law as a branch of law

Some scientists consider the family law to be a sub-branch of the civil law, although in the civil law system it is characterized by a certain apartness, which is due to the peculiarities of the relations regulated by the norms of the family law, and the originality of their means of regulation. Other scientists think that it is a separate branch of law.

Family law *is a complex of legal norms and principles that regulates and protects personal nonproperty and related to them property relations of individuals arising from marriage and belonging to a family.*

Family law regulates a specific complex of social relations – *family relations.* These relations are characterized by common features that give grounds to consider them as a holistic formation in the general system of social relations. These are relations that develop between family members and persons who, although not being members of the family in the full sense, are interconnected by certain family rights and responsibilities (for example, the relations between father, who was not married to the mother of the child, and that child).

The **subject of family law** is:

a) relations arising in connection with the marriage;

b) the personal nonproperty and property relations between family members;

c) the personal nonproperty and property relations between other relatives;

d) relations arising in connection with the placement of children deprived of parental care.

1. Family law mediates *relations related to the arising, termination of marriage and finding the marriage invalid*. These relations arise in the process of the emergence of marriage (marriage registration) or, conversely, its dissolution (divorce). Due to the fact that these relations are aimed at the establishment or termination of family rights, they are the *subject of family and legal regulation*. Family law contains provisions that establish the procedure and conditions for the marriage, the procedure of registration, the legal consequences of engagement, conditions and procedure for the termination of marriage and others.

2. The second group of relations that are the subject of family law includes property and personal nonproperty relations between family members – spouses, parents and children. Law regulates the relations between the spouses regarding their personal nonproperty rights (the right to change the name at the marriage registration, the right to a joint decision of all matters of family life, parenting, etc.). There are many different property relations of spouses, requiring legal regulation – they are relations regarding the joint and separate property of the spouses, transactions with it, use, disposal, and so on. The subject of family law also constitutes various personal nonproperty and property relations between parents and children.

3. The legal norms regulate the personal and property relations between family members and other relatives – the relations of grandparents, great-grandparents and their grandchildren concerning communication and protection of the rights of grandchildren. The subject of the legal regulation is also the relations between other persons – brothers, sisters, stepmother, stepfather and children concerning communication and child protection. Alimony relations of certain family members and relatives are also subject to legal regulation.

4. Relations that arise in the process of placement of children deprived of parental care require special attention and legal regulation. There are legal mechanisms for protecting the rights and interests of minors who, for some reason are not able to live in the family (adoption, foster care, family-type orphanage).

Family relations can arise with regard to various goods – the individual items and property as a whole, money, securities, and goods belonging to the family members personally and so on. They distinguish nonproperty and property relations of family members, which are the subject of legal regulation.

Relations regulated by the norms of family law arise between persons who are objectively equal. Spouses, parents and children, adoptive parents and adoptive children, other family members and relatives are together in the same position and do not obey each other.

Thus, the **subject of family law** *constitutes the nonproperty and property relations arising from marriage, kinship, adoption and guardianship, adoption of a child in the family for education and for other reasons that are not prohibited by law and those that do not contradict the moral foundations of society and are based on equity and property independence of their participants.*

The method of family law is a complex of means, techniques, ways with the help of which the legal impact on the willful behavior of family members is carried out.

The method is ***dispositive*** because it is a complex of means with the help of which the legal impact on the relations of equal entities, the position of whom is characterized by mutual coordination of goals and interests, and that in the process of interaction satisfy their own interests is realized.

12.2. The sources, system and tasks of the family law of Ukraine

In accordance with Art. 7 of the Family Code of Ukraine (FCU) family legislation includes the Family Code and other normative legal acts. Meanwhile, the FCU establishes other sources, that make up the family legislation, which cannot be attributed to the legal acts. Thus, Art. 9 of the FCU provides a possibility of regulation of family relations by the agreement (contract) of the parties, and Art. 11 of the FCU also allows taking into account practices (customs) if they do not contradict other laws and the moral norms of society. That is why the agreement and certain practices should be also attributed to the sources of family law. Art. 13 of the FCU recognizes international treaties as part of the national family legislation of Ukraine.

So let's consider those and other sources of family law.

It should be mentioned that the first source which has the highest legal force is the **Constitution**; all other acts should be passed on its basis and should not contradict it.

Law and other normative legal acts are of great importance for regulation of family relations, for example the Convention of the State Family Policy, approved by the Resolution of the Verkhovna Rada on September 17, 1999; the laws "On the Prevention of Domestic Violence", "On the Protection of Childhood", "On State Assistance to Families with Children"; the Decree of President "On the Socioeconomic Support to the Formation and Development of Student's Family"; the Regulation on the Foster Family approved by the resolution of the Cabinet of Ministers of Ukraine and others.

Art. 8 of the FCU establishes a rule that whenever the present Code does not regulate property relations between spouses, parents and children, other family members and relatives, such relations are governed by relevant provisions of the **Civil Code of Ukraine**.

If some certain family relations are not regulated by the FCU or agreement (contract) of partners, the canons of the FCU, which regulate similar relations, are applicable to them (**analogy of law**). If it is impossible to use analogy of law to regulate such family relations, they are regulated in accordance with the general fundamentals of the family legislation. Thus, a gap in the law can be filled with specific contractual regulation of the legal relations, but if the parties wouldn't do it, an appropriate norm of the FCU will be applied to the regulation of similar relations. If it is impossible to apply the analogy of the law, they are governed in accordance with the general principles of family law.

The result of the current reform of family law in Ukraine is increasing dispositive norms, which provide an opportunity for participants of family relationships to determine the content of their relations by marriage, alimony or other **agreements**. So the contract is also a recognized source of family law.

It has been mentioned, that a specific source of family law is legal practice (a custom). **Legal practice (a custom)** is a legal norm, which was established without the intervention of public authorities as a result of prolonged and regular use of the same rules to the homogeneous cases of life. According to Art. 11 of the FCU, in the court hearing, through the application of the person the court can consider a local custom and traditions as well as customs and traditions of national minority, to which the parties or one of the parties belong if these habits and traditions do not disagree with requirements of this law, other laws of Ukraine and moral canons of the society. Thus, such custom, as engagement, has acquired a legal importance in the FCU (Art. 31).

According to the Constitution, the international treaties ratified by the Verkhovna Rada of Ukraine, are part of the national legislation of Ukraine (Art. 9). So, such international treaties as conventions and bilateral agreements on legal assistance in civil and family cases which are concluded by Ukraine with other countries are recognized as part of the national family legislation of Ukraine if there is consent of the Verkhovna Rada for that. Examples are: the Convention on the Rights of the Child; the Convention on Human Rights and Fundamental Freedoms; the Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters of the CIS member states.

The **system of modern family law** is its internal structural organization, whose elements are family norms, principles and institutions. *The legal norm of family law* is a formally defined, mandatory rule of conduct that regulates and protects family relations. *Family principles* are the main basics, guiding ideas according to which legal regulation and protection of family legal relations are made. These include, for example, the principles: of monogamy; freedom and voluntariness as to the conclusion of marriage and divorce; equality of men and women in personal nonproperty and property rights; moral and material support to family members and others. The *family institute* is a set of family law legal norms and principles which regulate and protect the homogeneous family relations. The most important of them are the institutions of marriage, rights and responsibilities of spouses, parents and children, adoption, guardianship and trusteeship.

The system of family law consists of two parts – general and special. The *general* one defines the principles and sources of legal regulation of family relations, the number of participants, the order of realization of subjects' rights and duties. The *special part* includes the institution of marriage, parenthood, the legal regime of marital property, payment and goals of alimony and forms of upbringing orphans and others.

The **tasks** of family law are:

1) determining the principles of marriage, personal nonproperty and property rights and freedom of the spouses, the grounds for emergence, the content of personal property and nonproperty rights and duties of parents and children, adoptive parents and adopted children, other family members and relatives;

2) strengthening the family as a social institution and a union of certain persons;

3) strengthening the sense of duty to parents, children and other family members;

4) building family relations on an equal footing, on the feelings of mutual love and respect, mutual help and support;

5) ensuring family care, the possibility of spiritual and physical development to every child.

12. 3. The procedure and conditions of registration of marriage

A **marriage** is a family union between a woman and a man, duly registered in a Civil Status Registration Authority. From that definition it is possible to see such features of marriage as:

a) it is a union of woman and man. The FCU allows concluding a marriage only between persons of different sex; a union of two women or two men does not constitute a ground for them to have rights and responsibilities of a married couple;

b) it is not a simple union of woman and man, it is a family union, that presupposes cohabitation, i.e. a general mode of life, mutual rights and responsibilities;

c) this union should be registered in a public civil status act registration authority.

When a man and a woman live together as a family without marriage, it is not the ground for beginning of rights and duties of spouses.

It is very important to distinguish the circumstances which are required for registration of marriage. They are conditions of marriage, which can be positive and negative.

Conditions of marriage: *Positive conditions* are those which give an opportunity to marry:

1. *Achievement of marriageable age* (Art. 22 of the FCU).

Marriageable age for women and men is **18 years**. Persons wishing to register their marriage shall be of marriageable age as of the date of marriage registration. Upon application of a person that has attained 14 years of age, a court may grant him/her the right to marry if it is found than such a marriage satisfies his/her interests (Art. 23).

2. *Free marriage*.

A marriage shall be based on free consent of woman and man. Forcing a woman and man into a marriage is not permitted.

Registering the marriage with a person found legally incapable, as well as with a person who does not realize the significance of his/her actions and (or) is unable to keep them under his/her control is impossible.

The following *negative conditions* give no opportunity to conclude a marriage:

1. *If one of the parties is already married*. Woman and man can be in one registered marriage, they have a right to another marriage only after divorce.

2. *Woman and man are relatives related to one another by blood*.

Full-blood and half-blood brother and sister may not be married to each other. Full-blood brothers and sisters are those who have common parents. Half-blood brothers and sisters are those who have either common mother or common father. Cousins, aunts, uncles and nephews, nieces who are related by blood may not be married to each other.

A court may decide to grant the right to marriage between the natural child of the adopter and the child he/she adopted, as well as between children that he/she adopted.

The adopter and the child he/she adopted may not be married to each other. A marriage between the adopter and the child he/she adopted may be registered only if the adoption has been terminated.

3. Recognition of a person incapable. An incapable person is unable to be aware of and (or) control his/her actions due to chronic and stable mental disorder and thus be aware of the consequences of the consent to the marriage. In addition, a marriage with a mentally ill person is a danger to children who may be born in this marriage, and inherit a mental illness.

4. A serious disease or illness dangerous to another spouse and/or their descendants. This is a relative circumstance for termination of a marriage.

The procedure for concluding a marriage starts when a woman and a man file an application for marriage registration with any Civil Status Registration Authority of their choice.

As a rule, a woman and a man file an application for marriage registration in person. Meanwhile whenever a woman and (or) a man are unable, for valid reasons, to personally file the application for marriage registration with a Civil Status Registration Authority, such an application, certified by a notary, may be submitted by their legal representatives. Powers of such legal representatives should be certified by a notary.

A Civil Status Registration Authority shall have the duty:

1) to inform persons that have filed an application for marriage registration about their rights and responsibilities as would-be spouses and parents, as well as on the responsibility for concealing obstacles to marriage registration;

2) to define the day and time of registration of marriage with taking into account wishes of persons who have filed an application for marriage registration.

The duties of persons who have filed an application for marriage registration:

1. Persons that have filed an application for marriage registration should inform each other of the state of their health.

2. The person that has given up the marriage shall have the duty to reimburse to the other party the expenses the latter has incurred in connection with preparation for the marriage registration and the wedding. Such expenses are not subject to reimbursement if giving up the marriage is explained by unlawful, immoral conduct on the part of the bride, fiance, by his/her hiding the circumstances of essential importance for the giver-up (serious illness, existence of a child, criminal record, etc.).

4. Whenever a person that has been offered a gift on the occasion of the future marriage gives up the marriage, the deed of gift, upon the donor's request, may be terminated judicially. If the deed is terminated, the person should return back the gift she/he has been offered and in the case the gift was not preserved – pay back its cost.

A marriage is registered after the expiration of a period of **one month** after the date on which the persons filed their application for marriage registration. Should there be serious reasons, the manager of the Civil Status Registration Authority permits the applicants to register the marriage prior to the expiration of this time limit.

If the bride appears to be pregnant, has given birth to a child and if there is a real threat to the life of the bride or fiance, the marriage is registered the day on which the application concerned was filed.

Should obstacles to marriage registration be available, the manager of the Civil Status Registration Authority may delay marriage registration for three months maximum. The decision on such a delay may be appealed against to a court.

A marriage is registered in the *premises of a Civil Status Registration Authority.* Upon request of the bride and fiance, their marriage may be solemnly registered in another place.

Upon request of the bride and fiance, their marriage may be registered in the place where they live, where an in-hospital medical treatment is provided or in any other place if, for valid reasons, they are unable to appear in a Civil Status Registration Authority.

The presence of the bride and the fiance at the registration of their marriage is compulsory. Marriage registration through a representative is not permitted.

12.4. Personal nonproperty and property rights and responsibilities of spouses

All rights and obligations of spouses are divided into nonproperty and property. **Nonproperty** ones include:

- the right to motherhood and fatherhood;
- the right of the wife and the husband to respect for their identity;
- the right of the wife and the husband to physical and spiritual development;
- the right of the wife and the husband to change their family names;
- the right of the wife and the husband to the assignment of responsibilities and joint solution of family matters;
- the right of the wife and the husband to personal liberty;
- the right of the wife and the husband to choose the place of their residence;
- the right to follow the way, which is not forbidden by law and which is not in disagreement with moral canons of the society in regard to keeping marriage relationship;
- the right to discontinue marriage relationship;
- the duty of the wife and the husband to care for their family, to build family relationship between themselves and between other members of their family basing themselves on feelings of mutual love, respect, friendship and mutual support;
- the husband has to strengthen respect as to mother and the wife has to strengthen respect as to father.

Such rights and obligations are established by Chapter VI of the Family Code of Ukraine. Property rights and obligations are usually a less emotional component because they relate to material goods which are the subject of a large number of lawsuits.

Personal private property of the wife and the husband is:

1) property he/she acquired prior to the marriage;

2) property he/she acquired in the marriage but on the basis of a deed of gift or succession;

3) property he/she acquired in the marriage but for his/her personal money;

4) housing acquired by him/her during marriage because of its privatization under the Law of Ukraine "On Privatization of State Housing";

5) land acquired by him/her in marriage because of the privatization of land;

6) personal private property of the wife and the husband includes articles for personal use, inclusive of valuables even if they have been acquired for joint money of spouses;

7) personal private property of the wife and the husband includes prizes, bonuses that he/she has received for personal merits. The court may recognize the right of the other of the spouses to a share of such a prize if it would be ascertained that he/she has contributed with his/her efforts (keeping household, bringing up children, etc.) to obtaining this prize;

8) personal private property of the wife and the husband includes money received in reparation of a lost (damaged) good, which belonged to him/her, as well as in reparation of the damage inflicted thereon;

9) personal private property of the wife and the husband includes insurance indemnities paid to him/her in the framework of compulsory or voluntary personal insurance;

10) the court may find that property acquired by the wife, the husband during the period of separation as a result of actual termination of marriage relationships belongs to personal private property of the wife, the husband;

11) if the money for which the property has been acquired, in addition to joint resources, includes money of one of the spouses, the share in this property, proportional to his/her contribution, belongs to his/her personal private property (Art. 57);

12) if a good belonging to one of the spouses bears fruits, breeds or generates an income (dividends), this spouse is the owner of such fruits, gets or income (dividends).

When commanding his/her personal property a wife, a husband is obliged to consider the interests of a child, other members of their family, who have rights to use the property.

At the same time property acquired by spouses during the marriage except things of personal use is their **joint matrimonial property** irrespective of the fact that one of them had no earnings (incomes) for valid reasons (training, keeping household, caring for children, illness, etc.). The husband, the wife command the property, which is an object of the right to joint ownership, only through mutual agreement. When a contract is closed by one spouse, he/she is supposed to have done it with knowledge and agreement of another spouse. The husband (the wife) has the right to turn to the court asking the court to acknowledge the contract invalid, which was made by another spouse without his/her knowledge and agreement. The contract, which requires a state notary certification, or the contract as to valuable things can be closed by a spouse only if another spouse gives his/her agreement in the written form. This agreement must be certified by the notary public. The contract, made by one spouse in the interests of the family, creates obligations for another spouse, if property, got through this contract, was used in the interests of the family.

The objects of the right to the joint matrimonial property are:

- any goods, except those excluded from civil circulation;
- the wage, retirement benefit, fellowship, other earnings received by one of the spouses constitute the object of spouses' right to the joint matrimonial property;
- prizes, money, other property, including the honorarium obtained under agreement for the sake of the family if one of the spouses enters into such agreement;
- goods intended for professional occupation (musical instruments, office equipment, medical equipment, etc.) that were acquired during marriage for one of the spouses.

If personal property of one spouse was significantly *enlarged in value* as a result of common investment of work, finance or for account of another spouse during their marriage, this property can be adjudged in court to be an object of the right of the spouses to the joint ownership. There are other cases when some objects can be recognized as those of the right of the spouses to the joint ownership.

In the case of *partition of the property* that is the object of the spouses' right to the joint matrimonial property, the wife's and the husband's shares are equal unless the agreement between them or marriage contract provides otherwise. When considering the dispute with regard to property partition, the court, under the essential circumstances, may derogate from the principles of the spouses' shares equality, in particular, if one of the spouses did not care about financial maintenance of the family, concealed, destroyed or damaged the joint property, spent it in the way incompatible with family interests. Upon judicial decision, the wife's, husband's *share may be increased* if he/she is living together with children and an adult son, daughter, unable to work, on the condition that the amount of maintenance they receive appears to be insufficient to ensure their physical and spiritual development, as well as medical treatment.

The husband and the wife have the right to make all types of contracts, which are not forbidden by law, as to his/her personal property and also property which is an object of the right of the spouses to the joint ownership. So they can make a contract of sale, exchange, gift, lifelong maintenance (attendance) agreement and others.

Divorce does not discontinue the right to the joint ownership of property, purchased during the time of marriage. A husband and a wife have the right to divide their property that is an object of the right of the spouses to the joint ownership through a mutual agreement irrespective of their divorce. The agreement of division of the immovable property has to be notarized. If the property which is an object of the right to the joint ownership is being divided, the parts of the husband and the wife are equal if the size of their parts was not determined with the agreement or marriage contract. Hearing the case about the division of the property, the court can change the rule of equal parts of spouses if there are significant reasons, in particular if one of the spouses hid material things, was destroying the joint property or damaging it or wasting it not thinking about the family or did not care for material well-being of the family. Through a court decree the part of the property of one spouse (the husband or the wife) can be more than the part of the other spouse if children live with her (him), and also if the incapable daughter (or son) live with her (him) if alimony is not enough for a good physical and spiritual development and medical treatment. Things which cannot be divided are given to one of the spouses if another mode was not

determined with their mutual agreement. Things for professional occupation are given to the spouse who used them in his/her professional practice. The price (how much these things cost) of these things is considered when other things are given to the other spouse. Money compensation can be made by one of the spouses to another spouse for his/her part of the joint property, in particular, a house, a flat, a lot only through their mutual agreement, except cases, mentioned in the Civil Code of Ukraine. Adjudgement of money compensation to one of the spouses is possible if money for compensation was put in a special account of the court before discussing this mode in court.

If a woman and a man live as a family but are not in official marriage, property, gained during their cohabitation, belongs to them as of the right to the joint ownership if another mode was not determined through a mutual agreement in the written form.

The husband and the wife are to materially support each other. The *right to support* (alimony) belongs to that of the spouses, who is incapable of working (disabled) and needs material support if the other spouse can provide material support. The incapable one is that of the spouses who reached the retiring age established by law or who has a disability status 1, 2 or 3.

One of the spouses has the right to support if his/her salary, pension, income from his/her property or other income do not provide him/her with living wage, established by law.

The person has no right to support if the person was dishonest in family relationship or if the person got incapable in consequence of deliberate crime, committed by this person, if this crime was proved in court.

The spouse, who got incapable in consequence of illegal conduct of the other spouse, has the right to support irrespective of indemnification, according to the Civil Code of Ukraine.

Divorce does not cancel the right to support, which appeared in the time of marriage. After divorce a person has the right to support if he/she got incapable before the divorce or if he/she got incapable within one year after the day of divorce and needs material support if her/his former spouse can provide with material support. A person also has the right to support when he/she became disabled more than a year after the day of divorce if her/his disablement was a result of illegal conduct of the former spouse as to her/him when being in marriage.

If at the time of divorce husband and wife are of the age which is 5 years less than the retirement age established by law, he/she has the right to support after reaching the retirement age if they lived together in marriage at least during 10 years.

If one of the spouses did not have an opportunity to get education, to work because he/she was busy with bringing up children, housekeeping, taking care of the members of the family or because of illness or other circumstances which have essential significance, he/she has the right for support after divorce even if he/she is capable of working if he/she needs support, and the former spouse can provide material support. In this case the right to support lasts 3 years since the day of divorce.

One spouse can give support to the other spouse in kind or in the form of money through their mutual agreement. Through a court decree one of the spouses is given alimony, as a rule, in the form of money.

Alimony is given monthly. Through mutual agreement alimony can be given in advance.

If the payer of the alimony is going for permanent residence to a foreign country, with which Ukraine has no treaty of aid and advice in legal matters, alimony is paid in advance for the period, determined in a mutual agreement of the spouses, and in the case of argument between the spouses, it can be determined in court.

Spouses can close the *contract* about providing one of them with support, where they can determine conditions, size and terms of the alimony payment. The contract is closed in the written form and certified by a notary public. In the case of default, alimony can be demanded on the ground of the executive note of the notary public.

The right of one of the spouses to support as well as the right to support which was received after divorce, *is discontinued* in the case if the ability to work has been renewed or if the person has got remarried. The right to support is discontinued since the day when these circumstances arrive.

The wife has the right to support from her husband when she is pregnant. The wife with whom the child lives also has the right to support from her husband – the father of the child, until the child is 3 years old.

If the child has mental or physical development defects, the wife with whom the child lives has the right to support from her husband until the child is 6 years old.

The right to support belongs to the pregnant wife as well as to the wife with whom the child lives irrespective of whether she works and irrespective of her financial state on condition that her husband can provide her with material support.

Alimony, awarded to the wife at the time of her pregnancy, is paid after child's birth without an additional court decree. The pregnant wife or the wife with whom a child lives has the right to support after divorce too.

The husband with whom the child lives has the right to support from his wife – the mother of the child, until the child is 3 years old. If the child has mental or physical development defects, the husband with whom the child lives has the right to support from his wife until the child is 6 years old.

The right to support belongs to the husband with whom the child lives irrespective of whether he works and irrespective of his financial state on condition that his wife can provide him with material support.

The husband with whom the child lives has the right to support after divorce too.

If one of the spouses lives with a disabled child, who cannot live without somebody's constant care and who is cared for by this spouse, this spouse has the right to support on condition that the other spouse can provide him/her with material support. The right to support is in force during the whole period of the disabled child's living with the spouse and does not depend on the financial state of the spouse, with whom the disabled child lives.

The wife (the husband) mutually bears expenses connected with the disease or mutilation of the spouse.

If the husband and the wife, who are not in official marriage, live for a long time as a family, that of them who became incapable of working during their cohabitation has the right to support in accordance with the Family Code.

The wife and the husband, who are not in official marriage, have the right to support if their child lives with her (him).

Questions for self-assessment

1. What is the order of concluding a marriage?
2. What is the subject and sources of the family law of Ukraine?
3. What personal nonproperty and property rights and responsibilities of spouses do you know?
4. What is the marriageable age in Ukraine?

The practical task

During marriage Stephen and Diana acquired several valuable women's rings. Diana had never worn them, and her husband kept these things for the accumulation of capital. They decided to divorce and a question about the owner of that property arose. Diana insisted that it was her personal private property, as that was women's jewelry, items for personal use. Stephen believed that the jewelry was the object of a joint ownership, as they were not acquired to be worn, but for capital accumulation.

Who is right in this situation? Justify your answer.

13. The notion and sources of labor law. Labor contract

13.1. The notion of the labor law and labor relations

Life of any man in society is connected with labor activity which is the basic source of material resources received by him/her. That is why labor law is one of the main branches of the current law of Ukraine.

Everyone in Ukraine has the right to work. That is established by Art. 43 of the Constitution of Ukraine. **Labor law** is *one of the branches of the system of law of Ukraine which regulates labor and other social relations closely connected with it that arise between the employer and employee in the process of implementing that constitutional right to work by the employee.*

The **subject of labor law** is labor relations arising from the conclusion and implementation of the employment agreement, and relations that arise during the resolution of labor disputes, relations of in-plant training, employment relations and other closely related ones. These are not all the relations associated with work in general, but only those social and labor relations that arise, develop and terminate in connection with direct activities of people in the process of work.

The subject of labor law is relations that exist on the basis of **labor that is characterized by certain features**.

1. Labor law regulates the relations of labor that have a social form. Work of people in their own household, work for "themselves" is not regulated by labor legislation because it does not create legal relations.

2. Labor law regulates relations that function on the basis of free labor. Labor relations should be based on free will; there is no coercion in any form.

Therefore relations arising from military duties, serving a sentence set by a court verdict are not governed by labor law.

3. Labor law regulates relations of wage labor. Wage labor means that it is carried out by a person who is not the owner of the property of the enterprise. Labor legislation acts where there are relations between the employer – the property owner or an authorized body – and the hired person. But labor legislation does not regulate property relations, and its scope does not include relations between the owners.

4. Labor law regulates relations arising from collective labor. The current work is usually cooperative in nature, and many people are involved in the labor process. Subjects of employment should cooperate with each other, following the generally recognized rules of social life.

5. Labor law regulates relations with organized labor. Each worker performs his work functions, and their activities must be consistent. The employee must perform work of a certain kind and type, which is defined by profession, speciality, qualification, position. His work is regulated by technological standards. In today's manufacturing equipment and technics that can be a source of danger can be used, and therefore the labor process must be organized with the appropriate level of security. An employee follows internal regulations, a certain regime of work.

Labor law is based on the following principles:

- freedom of labor and employment;
- protection against unemployment;
- equality in work;
- fair remuneration;
- the right to rest;
- the right to vocational training;
- the protection of labor rights;
- the right of an employer to require from employees fair performance of their duties, etc.

The main type of relations governed by labor law is labor relations. First of all, they are characterized by direct execution of works and subject composition (employee and employer).

The difference between the labor relations and other relations in the process of work is that: a) labor relations appear with the fact of starting work, while other relations (e.g. disciplinary or liability, resolving labor disputes)

do not necessarily appear for the worker; b) actors of labor relations are always a subject of labor law, while not all actors of labor law are subject to labor relations (for example, they are not labor collectives, trade unions, government bodies and local authorities, bodies of consideration of labor disputes).

The general features of labor legal relations are as follows:

- parties of legal relations always have subjective rights and bear legal responsibilities;
- legal relations are always a two-way communication;
- legal relations appear in public relations, where the rights and obligations are provided by the state coercion;
- legal relations act as a specific legal connection.

In addition to general characteristics, **specific features** of labor relations are:

- they appear only at the beginning of the work under the employment contract;
- labor relations are individual; their actors (participants) are employer and employee;
- their legal content is a set of rights and obligations of participants;
- work performed under labor relations is made by the employee personally, and he/she is not entitled to entrust it to anyone else;
- work is performed according to a certain profession, speciality, qualification and position;
- the employee should follow internal labor regulations;
- the employee performs the norm of work;
- salary to employees shall be paid on the grounds specified by law, local regulation and agreement of the parties.

These features make it possible to determine labor relations as different from other "internal" relations of the labor law branch (of labor organization, providing social conditions at work), and similar to them "outside" labor relations regulated by the other branches of law (e.g. civil contracts (household contractor's agreement, construction contract and agreement for design and survey work, for scientific research or research and development and technological work of service, etc.).

Labor relations are *a bilateral legal connection between employee and employer arising under the employment contract and consisting in*

the complex of subjective rights and duties of the employee performing a certain work according to profession, speciality, qualification and position for remuneration, with the subordination to the internal labor regulations, and creation of appropriate conditions for performing it and remuneration by the employer.

The parties (actors) of labor relations are employer and employee.

The **employee** may be just an individual who has the appropriate properties (legal capacity and capability) and has reached a certain age. A party in the employment relations cannot be a group of people.

Employment of persons under *sixteen* years old shall not be allowed. By consent of one of the parents or a person substituting thereof, persons who reached *fifteen years* may be employed in exceptional cases. To prepare youth for efficient work the employment of pupils of comprehensive schools, vocational schools and secondary specialized educational institutions shall be allowed for performance of easy work causing no harm to health or the studying process in free time as they reach *fourteen years* by consent of one of the parents or a person substituting thereof.

The employee does not gets legal capacity and capability not from certain age or date of birth, but on the ground of the legal fact – concluding a labor agreement and beginning work.

The **employer** is a legal entity (enterprise, institution, organization) or a natural person who employs an individual on the basis of an employment contract.

The **legal content** of labor relations is the rights and obligations of the employee and the employer.

The basic rights and obligations arise from the labor relationship nature of the labor contract, under which the employee shall undertake to perform work determined in this agreement subject to observance of internal regulations, and the owner of the enterprise, institution or organization or the body or individual authorized by him/her shall undertake to pay the employee salary and provide working conditions required for performance of work as prescribed by the labor legislation, collective contract and agreement of the parties.

13.2. Specifics of the labor law method

Labor law is characterized by three main **methods of legal regulation**: *recommendation, permission and prohibition.*

For example, every year the Cabinet of Ministers of Ukraine in order to create favorable conditions for the celebration of national holidays and rational use of working hours shall issue an order that recommends to heads of enterprises, institutions and organizations to move work days of employees for whom a five-day working week with two days off is set to other days in the manner and on the terms established by legislation.

The method of permissions provides opportunities to establish additional subjective rights and duties. Most often they are used in a contract regulating all types and levels – from labor and collective agreements to the general agreement.

Prohibitions in labor law are established to ensure the rights and realization of legitimate interests of the subjects of relations. They are set at different levels of regulation – constitutional, international, at the level of labor legislation. For example, the prohibition against forced labor is established in Art. 43 of the Constitution of Ukraine, the Convention No. 29 of the International Labor Organization in 1930, Art. 31 of the Labor Code of Ukraine. Art. 22 of the Labor Code prohibits unjustified refusal of employment, restriction of rights and legitimate interests or providing illegal exemptions and benefits to certain categories of workers.

13.3. The sources of the labor law

The labor legislation shall provide a high level of working conditions and an all-round protection of labor rights of employees.

The main place in the system of labor law sources is occupied by the **Constitution of Ukraine**. The Constitution of Ukraine establishes a list of labor rights: a) the right to freely dispose of their ability to work, to choose profession and occupation; b) the right to proper, safe and healthy terms of labor, to the wages not lower than established by law; c) the right to protection against unemployment; d) the right to protection of their rights through the mechanism of resolution of individual and collective labor disputes as specified by law, including the right to strike; e) the right to rest and others.

For the first time the Constitution established a prohibition to use forced labor. Everyone has the right to proper, safe and healthy working conditions, wages, not lower than prescribed by law. This has also been fixed for the first time. Citizens are guaranteed protection from unlawful dismissal. Art. 44 of

the Constitution of Ukraine for the first time enshrines the right of those who work, to strike to protect their economic and social interests.

International legal acts. Art. 8 of the Labor Code of Ukraine specifies the constitutional provisions that if an international treaty or agreement in which Ukraine is a party establishes rules other than those contained in its domestic labor legislation, the rules of the international treaty or international agreement are used. The most common type of establishing international legal norms is an agreement between states. These agreements are: the agreement between the Government of Ukraine and the Government of the Republic of Armenia on labor activity and social protection of citizens of the Republic of Armenia and Ukraine who work outside their countries; the agreement between the Government of Ukraine and the Government of the Slovak Republic on mutual employment of citizens; the agreement between the Government of Ukraine and the Government of the Czech Republic on the mutual employment of citizens of Ukraine and the Czech Republic and others.

Multilateral agreements are also of great importance. In the field of labor rights enshrined in international acts, there are the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights and the European Social Charter.

At the European level, the right to work and other labor rights are reflected in a number of other legal acts, such as: the Directive of the European Parliament and the Council "On Certain Aspects of the Organization of Working Time"; "On the Application of the Principle of Equal Treatment for Men and Women in Matters of Employment, Training and Promotion, and Working Conditions".

In the hierarchy of domestic sources of labor law the **laws** occupy an important place after the Constitution. The main act regulating labor relations is the **Labor Code of Ukraine**, enacted on December 10, 1971 (entered into force on 1 June, 1972) and focused on strict government regulation. It shall regulate labor relations among all the employees, encouraging thereby increased labor efficiency, improved quality of work and greater efficiency of social production for the purpose of promoting the material and cultural standards of living of the working people, consolidating labor discipline and gradual transformation of labor for the good of society to a vital necessity of every able-bodied person. The current Labor Code of Ukraine has numerous

amendments, and to a lesser degree corresponds to the socio-economic situation in the country.

Art. 4 of the Labor Code states that the legislative acts of Ukraine may be adopted in accordance with the Labor Code of Ukraine. Examples of the laws of Ukraine are: "On Labor", "On the Procedure for Solving Collective Labor Disputes (Conflicts)", "On Trade Unions, Their Rights and Guarantees" and others.

Subordinate normative legal acts (acts of the President of Ukraine, the Verkhovna Rada of Ukraine, the Cabinet of Ministers, government bodies of the ARC, local normative acts) are essential in regulating relations in the field of labor. There are also specific local normative acts used at enterprises: a collective agreement, internal regulations, provisions on: a) certification of employees; b) payment of labor; c) remuneration for the results of the year; d) authorized collective labor protection and so on.

13.4. The concept of the labor contract and parties to it

The labor contract takes the central place in the mechanism of individual contractual regulation of labor conditions. It provides a rational and effective implementation of the most important social and economic rights: the right to work and the right to select the kind of employment that helps to freely determine the place, time and its other characteristics. That stimulates the activity and labor initiative of the employee, his/her professional growth, quality performance of job duties, harmonization of interests of labor relations. Labor agreements strengthen legal protection of the employee at all stages of emergence, change and termination of labor relations.

The labor contract has both economic and legal significance. The economic importance is that it provides the needs of its parties – the employee and the employer. The legal importance is as follows: 1) it is the most important institution of labor law that is central to its system and labor legislation; 2) it is an important guarantee of such labor related rights as the right to work, the right to select the kind of employment and the exclusive right of a citizen to dispose of their abilities to work; 3) the labor contract is a condition to apply labor legislation to the worker; 4) the labor contract is the basis for arising of labor relations and it creates a legal basis for their functioning.

According to part 1 of Art. 21 of the Labor Code of Ukraine the **labor contract** is *an agreement between the employee and the owner of the*

enterprise, institution or organization or the body or individual authorized by him/her according to which the employee shall undertake to perform work determined in this agreement subject to observance of internal regulations, and the owner of the enterprise, institution or organization or the body or individual authorized by him/her shall undertake to pay the employee salary and provide working conditions required for performance of work as prescribed by the labour legislation, collective contract and agreement of the parties.

As one can see, there are *two parties* to the labor contract that have the appropriate rights and obligations relative to each other (*employer and employee*). That list is not exhaustive. All other subjects have the right to interfere in the relations of those two parties only in the cases and order strictly regulated by the legislation of Ukraine.

As a general rule, an employee cannot be a person under the age of sixteen years. According to Art. 188 of the Labor Code of Ukraine as an exception, by consent of one of the parents or a person substituting thereof, persons who reached fifteen years may be employed. To prepare youth for efficient work, the employment of pupils of comprehensive schools, vocational schools and secondary specialized educational institutions shall be allowed for performance of easy work causing no harm to health or studying in free time as they reach fourteen years by consent of one of the parents or a person substituting thereof.

The employer as a party to the labor contract can be both a legal entity and a natural person. Employers as natural persons are divided into: 1) individual entrepreneurs without creation of a legal entity with a right to hire employees and 2) individuals who use hired labor associated with the provision of personal services (cooks, nurses, drivers, etc.).

Recently, economy partnerships have often hired workers without conclusion of labor contracts often using civil contracts instead. It is important to distinguish between the labor contract and the civil contract connected with work in order to correctly apply legislation. Since labor legislation does not regulate the relations of the parties to civil law contracts, it can seriously worsen the legal status of employees and negatively impact on the appropriate guarantees.

Making civil contracts with citizens instead of labor contracts creates some advantages for legal entities and individuals: a) labor is not paid for the time spent by the employee, but for the end result; b) if there is no end result,

specified by the contract, in the absence of guilt of the customer the work for the contract is not paid; c) no records are made in the work record card; d) sick-leave, leave, maternity leave state allowance, etc. are not paid; e) there is no need to draw up a dismissal and make payments related thereto; f) there are no numerous benefits provided by labor legislation, such as discharge allowance, compensations, limited liability of the employee for the damage caused to the company, etc.; g) in the case of material liability stipulated by the civil contract the principle of full compensation for damage acts (including reimbursement of missed profits); h) with completion of the assigned work any relationships between the parties terminate. However, it should be noted that mostly employers get the benefits for civil contracts associated with labor; workers experience significant infringement of their labor rights and their guarantees.

According to the labor contract the employee performs his/her work functions, i.e. he/she is employed by the enterprise to perform a specific job (some functions) according to his/her specific speciality, qualification, position, while according to the civil law contract related to labor the worker (who has the status of a contractor or performer, but not an employee) accomplishes the individual tasks and the end result is determined by it (for example, planting a tree, building a house, writing a textbook, etc.) that is the subject of the labor contract is the process of work, its organization. The main purpose of the civil contract is to obtain a certain material result or do a one-time task.

The labor contract has personal nature due to the fact that the implementation of work functions can only be performed by the employee personally. In the process of executing a labor function the employee must obey internal regulations. In the case of violation of regulations the employer may apply disciplinary sanctions to the guilty person as prescribed by labor legislation. In civil contracts, in the case of not fulfilling its conditions, civil liability is applied. According to the labor contract the obligation to provide working conditions required for performance of work is imposed on the employer. The contractor or performer, unlike the employee, is not subject to internal labor regulations, and he/she organizes his/her work and performs it at his/her own risk.

There are also specifics of the remuneration issue. Thus, the labor contract remuneration is paid in the form of wages according to the pre-

established norms, systematically; it has its structure, is limited to the minimum size and follows detailed legal regulation. Wage, guarantees, benefits, compensation, etc. (payment of leaves and other time off, sick leave, discharge allowance, etc.) established by labor legislation are guaranteed to the employee. In the civil contract, remuneration is established by the agreement of the parties, and its minimum size is not set. The contract may also provide advance or phased payment. No records of the performance of work in the work record card are stipulated by civil contracts.

Another feature of the labor contract is that it is usually termless (for an indefinite period). A fixed-term labor contract is concluded in cases when labor relations cannot be established for an indefinite term according to the nature of the work or the conditions of its implementation, or the interests of the employee, and in other cases stipulated by legislative acts. The term of the civil contract is determined by the parties.

For damage caused to the company due to violations of the assigned labor duties by workers, they bear material responsibility. But they compensate only direct actual damage, while under the civil law they also have to compensate for nonreceived incomes. In labor law, compensation may only be taken from the employee's salary, and not from anything else, including the property of the employee. For the employee, liability is only possible in the case of fault, while civil law also covers the case of its absence (for example, damage inflicted by a source of increased danger).

The *content of the employment contract* is a set of conditions (provisions) that define mutual rights and obligations of the employee and the employer.

Depending on their importance to the emergence of employment relations, conditions of the labor contract are divided into **essential (basic) and optional (additional)**. The essential ones must be included in any labor contract and without them a contract cannot be considered as concluded. Optional conditions are included in the labor contract by agreement of the parties, and their presence is not mandatory. If they are included in the labor contract, they gain the same legal force as the essential conditions.

The *essential conditions* of the labor contract are about: a) the place of work (workplace); b) the work functions; c) the remuneration; d) the beginning of action of the labor contract and its term.

The *optional conditions* include all other provisions of the labor contract, including the conditions of labor, the probation period of employment, pro-

visions about the disclosure of state, commercial and other secret protected by law, employee training and others.

Terms and conditions of labor contracts worsening the situation of workers compared with labor legislation of Ukraine are invalid.

Any direct or indirect limitation of rights or establishment of direct or indirect advantages when entering into, making alterations and termination of the labor contract depending on the origin, social and property position, race and nationality, sex, language, political convections, religious beliefs, membership in trade union or other association of citizens, kind and character of activity, place of residence shall not be allowed. According to Art. 22 of the LCU, unreasonable refusal of employment shall not be allowed. Women may not be refused to be employed and their salary may not be decreased on the grounds connected with pregnancy or availability of children under three years old, and single mothers – subject to availability of children under fourteen years old or a disabled child. In the case the above categories of women are refused of employment, the owner or body authorized by him/her shall be obliged to inform them about the reasons for refusal in writing.

Current law may establish requirements for the employee as to the age, education level, health (in the laws "On Higher Education", "On Notary", etc.).

When entering into a labor contract the citizen shall be obliged to submit the passport or other document identifying the person, the work record card, and in the cases prescribed by legislation – the document on education (speciality, qualification), the state of health and other documents. Only persons employed for the first time shall be employed without a work record card.

When entering into a labor contract it shall be prohibited to demand from the persons who take employment to provide data on their party affiliation and nationality, origin, residence permit and documents which are not prescribed by legislation.

It is not permitted to give access to work to the employee without concluding a labor contract on the ground of the order or instruction on employment issued by the owner or body authorized by him/her, and informing the central body of the executive power about the employment of the employee.

The person invited for work by way of his/her transferring from another enterprise, institution or organization as agreed upon between the directors

of enterprises, institutions or organizations may not be refused to enter into the labor contract.

In some spheres of the economy, employees are required to undergo a preliminary medical examination.

Entering into a labor contract with a citizen for whom according to the medical opinion the proposed job is against medical advice for the health reason shall not be allowed.

The owner shall be entitled to introduce limitations as to joint work at the same enterprise, institution or organization for persons being close or in-law relatives (parents, spouses, brothers, sisters, children, as well as parents, brothers, sisters and children of spouses) if in fulfilling labour obligations they are directly subordinated to or under the control of one another. At enterprises, institutions or organizations of the state form of ownership the procedure of introduction of such limitations shall be established by legislation.

Prior to commencement of work under the labour contract, the owner or body authorized by him/her shall be obliged to:

1) clarify to the employee his/her rights and obligations, as well as inform, against receipt, about working conditions, presence in the workplace where he/she will work, dangerous and harmful industrial factors which have not been removed yet, and possible consequences of their influence on health, his/her rights to benefits and compensations for the work under such conditions according to current legislation and collective contract;

2) acquaint the employee with internal regulations under the collective contract;

3) allocate to the employee the workplace, provide him/her with tools required for work;

4) instruct the employee on safety measures, industrial health, occupational hygiene and fire protection.

The labor contract is usually entered into *in writing*. It must be executed in writing in the following cases:

1) organized recruitment of employees;

2) entering into a labor contract for work in the regions with specific natural geographical and geological conditions and conditions of increased risk for health;

3) entering into the labor agreement (it is a kind of labor contract);

4) if the employee insists on entering into the labor contract in writing;

5) entering into a labor contract with a minor;

6) entering into a labor contract with an individual;

7) in other cases prescribed by the legislation of Ukraine (for example, with employees whose work is related to state secrets; with implementation of paid public works; labor contracts with religious organizations, for alternative (non-military) service; with persons involved in work on a farm and so on).

Written labor contracts are concluded in two copies; each one should be signed by the parties; it has the same legal force and is kept by each of the parties. The written form of the contract raises the level of guarantees of the parties as to the implementation of its provisions.

The Labor Code of Ukraine establishes common features inherent in all employment contracts. However, they differ in the term, form, content, order of making, etc. So, depending on the term, labor contracts are divided into *termless* (concluded for an indefinite period) and *fixed-term* (concluded for a definite term established by agreement of the parties, and the period of performance of certain work).

In accordance with Art. 21 of the Labor Code, a special form of the labour contract is an **agreement** in which its validity period, rights, liabilities and responsibilities of the parties (including the material ones), conditions of material security and organization of employee's work, conditions of termination of the contract, including that before the appointed time, may be determined as agreed upon by the parties. The scope of the contract shall be determined by the laws of Ukraine.

One of the important constitutional guarantees of the realization of the right to work is the prohibition of the owner or body authorized by him/her to demand from the employee to perform work not stipulated by the labor contract. However, labor relations arising on the contract's basis are not static, permanent, because of objective and subjective circumstances.

Art. 32 of the LCU includes such changes of the labor contract as: *transfer to another job, transfer (moving) to another workplace and changes in the essential working conditions.* They are separate legal categories, for which the law establishes a different procedure for applying them and guarantees of implementation. The legislation of Ukraine does not define what transfer to another job is. It only contains the basic principles of its legal regulation, namely it is prohibited to demand from the employee to perform work which is not stipulated by the labor contract; as a general rule, the transfer is allowed only with the consent of the employee.

Questions for self-assessment

1. What are the sources of the labor law of Ukraine?
2. What is the content of the labor contract?
3. What is the subject and method of the family law of Ukraine?
4. What are the main rights and duties of the labor contract parties?

The practical task

Five children came to visit their parents and celebrate a holiday. Once they began to discuss the question about the regulation of their activity by labor legislation. Father works as a mechanic at a power station, mother works at a collective agricultural enterprise, the son Alexander is the captain of a river ship, the daughter Maria works as a seller in a kiosk of her husband, the daughter Catherine is a freelance artist, selling her paintings, the son Vladimir is a soldier, and his son Ivan is a farmer. His wife is a housewife. Which activities are regulated by labor legislation?

14. Termination of labor relations

14.1. The notion and classification of the grounds for termination of the labor contract

In the science of labor law and labor legislation three categories associated with the termination of employment relations are used: termination of the labor contract, termination in the meaning of "breaking" the labor contract and dismissal. Termination of a labor contract is the expiry of the employment relations of the employee with the employer in all cases established by labor legislation. Breaking a labor contract means termination of the labor relations by unilateral will (whether the employer or the employee, or persons who are not party to the labor contract). Thus, the term "termination" has a broader meaning than the term "breaking the labor contract" but in English the term "termination" is used in both cases. The term "dismissal" is used for the employee and is synonymous with the term "termination of the labor contract" in its content.

The labor contract is terminated only if there are grounds for its termination. The grounds for termination of the contract are a legal fact or a set of legal facts enshrined in the law and necessary for the termination of the labor contract. They are divided into two types: 1) actions of the parties to the labor contract or persons who are not its parties; 2) events (expiration

of the labor contract, the death of the employee or employer – a natural person, etc.).

The grounds for termination are enshrined in Art. 36 and other articles of the LCU. Depending on who initiated the termination, the grounds are divided into the following groups:

- termination on the mutual initiative of the parties to the labor contract (for example, the agreement of the parties, completion of the validity period);
- termination of the labor contract on the employee's initiative (Art. 38, 39 of the LCU);
- termination of the labor contract on the initiative of the owner or body authorized by him/her (Art. 40, 41 of the LCU);
- termination of the labor contract on the initiative of persons who are not party to it (third party) (Art. 36, 45 of the LCU and others).

Termination of the labor contract is lawful if there is simultaneous presence of the following conditions: 1) grounds for termination of the employment contract established by legislation; 2) compliance with the procedure of dismissal; 3) the legal fact of termination (an order or instruction of the employer, employee statement, the relevant documents of the person authorized to demand cancellation of the contract).

14.2. Termination of the labor contract on the employee's initiative

The procedure and conditions for termination of the labor contract on employee's initiative are defined in Art. 38 and 39 of the Labor Code of Ukraine.

The employee shall be entitled to terminate the labor contract entered into for an indefinite period of time having sent a two-month notice to the owner or body authorized by him/her in writing. If upon the completion of the dismissal notice period the employee failed to leave the job and does not agree to the termination of the labor contract, the owner or body authorized by him/her shall not be entitled to dismiss him/her on the ground of the previously filed application, except for the cases when another employee is invited to his/her office who, according to legislation, may not be refused to enter into the labor contract.

If there are valid reasons, a labor contract may be terminated within the period requested by the employee. Such reasons include: movement to a new place of residence; transfer of the spouse to the job in another locality;

entering an educational institution; impossibility to live in this locality proven by medical opinion; pregnancy; care of a child until he/she reaches fourteen years, or of a disabled child; care of a sick family member according to medical opinion, or of a person of the 1st disability category; retirement; competitive employment, as well as other good reasons. This list is not exhaustive.

The employee shall be entitled within the period determined by him/her to terminate the labor contract at his/her own free will, if the owner or body authorized by him/her fails to observe: a) labor legislation; b) provisions of the collective or labor contract.

The fixed-term labor contract shall be subject to early termination at employee's request in the case of a) his/her disease or disablement which prevent performance of work under the contract; b) violation by the owner or body authorized by him/her of the labor legislation, collective or labour contract; c) in cases of good reasons (movement to a new place of residence; transfer of the spouse to a job in other locality; entering an educational institution; impossibility to live in this locality proven by medical opinion; pregnancy; care of a child until he/she reaches fourteen years, or of a disabled child; care of a sick family member according to medical opinion, or of a person of the 1st disability category; retirement; competitive employment, as well as other good reasons).

Disputes on early termination of the labor contract shall be settled in accordance with the procedure established for consideration of labor disputes.

14.3. Termination of the labor contract on the initiative of the employer

The labor contract may be terminated by the employer only on the grounds and in the manner prescribed by the law. The grounds for termination of the employment contract by the employer are divided into general (Art. 40 of the LCU) and additional (Art. 41 of the LCU and a special legislation).

The general grounds apply to all employees of enterprises, institutions, and organizations, regardless of the form of ownership, organizational and legal form. The additional grounds are the grounds that apply only to certain categories of employees. The list of the grounds for termination of the labor contract by the employer must be exhaustive. The employer has no right

to terminate the labor contract on the grounds not provided by current legislation.

The general grounds for termination of the labor contract on the initiative of the owner or body authorized by him/her are established in Art. 40 of the LCU.

The labor contract entered into for an indefinite period of time, as well as the term labor contract may be terminated prior to the completion of its validity period by the owner or body authorized by him/her only in the following cases:

1) changes in the production and labor organization, including liquidation, reorganization, bankruptcy or conversion of the enterprise, institution, organization, reduction of the number or staff of employees;

2) revealed inconsistency of the employee with the job or with work performed as a result of insufficient qualification or state of health which prevent continuing this work, as well as in the case of cancellation of access to state secret if fulfilment of obligations imposed on him/her requires access to state secret;

3) systematic failure of the employee to fulfil obligations imposed on him/her under the labor contract or observe internal regulations without good reasons if disciplinary or civil sanctions have been previously applied thereto;

4) absence from work (including absence from work for over three hours during the working day) without good reasons;

5) absence from work within more than four successive months as a result of temporary disablement, except for maternity leave, unless a longer period of workplace (office) preservation for a particular disease is established by legislation. Employees who lost capability in connection with labor injury or occupational disease shall retain their workplace (office) until rehabilitation or establishment of disablement;

6) reinstatement in the job of the employee who had been previously performing this work;

7) appearance at work under the influence of alcohol, narcotics or any other toxic substances;

8) on-the-job embezzlement (including the petty one) of the owner's property established by the court judgment that has become effective, or by the resolution of the body whose competence includes imposing administrative sanctions or taking measures of social influence;

9) conscription or mobilization of the owner (individual) during a particular period.

Dismissal on the grounds mentioned in clauses 1, 2 and 6 of that Article shall be allowed if the employee may not be transferred to another job by his/her consent.

Dismissal of the employee on the initiative of the owner or body authorized by him/her *shall not be allowed within the period of his/her temporary disablement* (except for dismissal according to clause 5 of Art. 40), as well as within the period of his/her staying on leave. This rule shall not apply to cases of full liquidation of the enterprise, institution or organization.

Additional grounds for termination of the labor contract on the initiative of the owner or body authorized by him/her with particular categories of employees under certain conditions are established in Art. 41 of the LCU.

In addition to the grounds prescribed by Art. 40 of this code, the contract may be terminated on the initiative of the owner or body authorized by him/her in the following cases:

1) single gross violation of labor obligations by the director of the enterprise, institution or organization of all forms of ownership (subsidiary, representative office, division and other separated subdivision), his/her deputies, chief accountant of the enterprise, institution or organization, his/her deputies, as well as officials of customs authorities, state tax inspectorates who were given personal ranks, and officials of state supervision and auditing service and state authorities exercising control over prices;

2) felony of the director of the enterprise, institution or organization which resulted in untimely salary payment or in the amounts lower than the minimum salary amount established by legislation;

3) felony of the employee directly servicing monetary, commodity or cultural valuables, if these actions give reasons to lose trust thereto on the part of the owner or body authorized by him/her;

4) commitment by the employee who fulfils educational functions of an immoral act being incompatible with continuing this work;

5) direct subordination to a close person contrary to the requirements of the Law of Ukraine "On Prevention of Corruption" (dismissal on that ground shall be allowed if the employee may not be transferred to another job by his/her consent);

6) termination of the authorities of officials.

Termination of the contract in cases prescribed by this Article shall be effected subject to observance of the requirements of part three of Art. 40 (Dismissal of the employee on the initiative of the owner or body authorized by him/her shall not be allowed within the period of his/her temporary disablement, as well as within the period of his/her staying on leave. This rule shall not apply to cases of full liquidation of the enterprise, institution or organization), and in cases prescribed by clauses 2 and 3 (commitment by the employee of an immoral act, wrongful actions of the employee directly servicing monetary, commodity or cultural valuables) of the requirements of Art. 43 of the LCU as well (with previous consent of the elective body of the primary trade union organization (a trade union representative)).

The owner or authorized body on their own initiative is required to terminate the labor contract with the official in the case of repeated violations by him/her of legislation requirements in licensing, issuing of permits or rendering of administrative services.

Questions for self-assessment

1. What grounds for termination of the labor contract do you know?
2. What grounds for termination of the labor contract on the initiative of the owner of the enterprise or organization or body authorized by him/her do you know?
3. What grounds for termination of the labor contract on the initiative of the employee do you know?

The practical task

The fault of Ms. Kulik, head of the department of accounting and distribution of containers, was in serious violations in the inventory of assets in the store No. 27. Chief Accountant demanded an explanation from her and, assuming that she was a bad example for subordinates, prepared a draft order for her dismissal according to part 1, Art. 41 of the Labor Code. The lawyer refused to sign the project, explaining that Ms. Kulik could not be dismissed on this ground.

Who and for what action may be dismissed on the ground of part 1, Art. 41 of the Labor Code?

15. Law regulation of working and rest hours

15.1. The notion of the working hours and the working day

Working hours as a condition of labor largely determine the level of life of employees. The amount of free time that is used for recreation, cultural and meeting other human needs depends on its duration.

Working hours are the time during which the employee following the internal regulations should fulfill his/her work duties at an enterprise, institution, organization or with respect to an individual person-employer according to the law, collective and labor contract.

Labor legislation establishes the following types of working hours: 1) normal working hours; 2) part-time work; 3) reduced working hours.

Art. 50 of the LCU establishes that **normal working hours** of employees may not exceed 40 hours per week. When entering into a collective contract enterprises and organizations may establish the number of working hours less than 40.

According to the agreement between the employee and the owner or body authorized by him/her, both at the moment of employment, and later on a **part-time working day** or **part-time working week** may be established. At the request of a pregnant woman, a woman having a child under fourteen years old or a disabled child, including the child she cares for, or a woman caring for a sick family member according to medical opinion, the owner or body authorized by him/her shall be obliged to establish for her a part-time working day or part-time working week. Remuneration of labour in these cases shall be effected pro rata hours worked or depending on the output.

An important guarantee of labor rights is the norm that part-time work shall put no limitations on the labor rights of employees.

Reduced working hours are a kind of working hours which is established by legislation (Art. 51 of the Labor Code) and is mandatory for the employer and paid as normal working hours.

Reduced working hours shall be established:

1) for employees aged from 16 to 18 years – 36 hours per week, for persons aged from 15 to 16 years (pupils aged from 14 to 15 years working within the period of vacations) – 24 hours per week. Working hours for pupils working during the academic year in their free time may not exceed half maximum working hours prescribed in paragraph one of this clause for persons of the respective age;

2) for employees performing work under harmful working conditions – not more than 36 hours per week. The list of plants, workshops, professions and offices with harmful working conditions engagement in which gives the right to reduced working hours shall be approved in accordance with the procedure established by legislation;

3) in addition, legislation shall prescribe reduced working hours for certain categories of employees (teachers, doctors, etc.).

Reduced working hours may be established at the expense of the funds of enterprises and organizations for women having children under fourteen years old or a disabled child.

Reduced working hours on/before holidays and weekends, at night.

The day *before official holidays or non-working days* (Art. 73) working hours of employees, except for employees mentioned in Art. 51 of the LCU, shall be reduced by one hour both with a five-, and six-day working week.

The day before days-off working hours with a six-day working week may not exceed 5 hours.

For working *at night* the established working hours (shift) shall be reduced by one hour. This rule shall not apply to employees for whom reduction of working hours has already been prescribed.

Working hours at night shall be put on a par with those during the day if this is required subject to conditions of production, in particular in continuous productions, as well as when working in shifts with a six-day working week with one day off.

Night working hours shall be from 10:00 p.m. until 06:00 a.m.

In labor law, working at night is seen as an exception; it can negatively affect health. Therefore, labor legislation limits its use, and it is prohibited for certain categories of workers in particular:

1) pregnant women and women having children aged under three years (Art. 176 of the LCU);

2) persons under eighteen (Art. 192 of the LCU);

3) other categories of workers required by law.

Engagement of women in work at night shall not be allowed, except for those branches of national economy in which this is of particular necessity and is allowed as a temporary measure. The list of these branches and kinds of work with specification of maximum periods of engagement of women's work at night shall be approved by the Cabinet of Ministers of Ukraine. Restrictions also shall not apply to women working at enterprises where only family members are engaged.

According to Art. 108 of the LCU work at night is charged at a higher rate.

For employees a five-day working week with two days-off shall be established. In a five-day working week daily working hours (shifts) shall be determined by internal regulations or shift schedules to be approved by the owner or body authorized by him/her as agreed upon with the elective body of the primary trade union organization (a trade union representative) of the enterprise, institution or organization subject to the established duration of the working week (Art. 50 and 51).

At the same enterprises, institutions or organizations where according to the character of production and working conditions introduction of a five-day working week is not expedient, a six-day working week with one day off shall be established. In a six-day working week daily working hours may not exceed 7 hours at the week rate of 40 hours; 6 hours at the week rate of 36 hours, and 4 hours at the week rate of 24 hours.

A five- or six-day working week shall be established by the owner or body authorized by him/her jointly with the elective body of the primary trade union organization (a trade union representative) with due regard for specific character of work, opinion of the labor collective, and as agreed upon with the local People's Deputy Council.

Overtime work shall be considered to be the work over the established daily working hours. Overtime work shall not be usually allowed.

According to Art. 62 of the LCU the owner or authorized body may use overtime only in such *exceptional cases* determined by legislation as:

1) performance of work required for the country defense, as well as for rehabilitation of public or natural disaster, an industrial accident and immediate remedy of their consequences;

2) performance of publicly important work on water and gas supply, heating, illumination, sewerage, transport, communications – to remedy incidental or unexpected circumstances preventing their proper functioning;

3) in case of necessity to complete the work started which as a result of unforeseen circumstances or accidental delay according to production conditions could not be completed within normal working hours, when termination thereof may result in damage or loss of state or public property, as well as in the case of need for immediate repair of mechanisms, machines or other equipment when their failure causes stoppage of work for significant number of workers;

4) in the case of necessity to perform handling operations for prevention or removal of downtime of the rolling equipment or accumulation of cargo in departure and destination points;

5) to continue work in case of non-appearance of the employee who shall take shift when work may not be interrupted; in these cases the owner or body authorized by him/her shall be obliged to take immediate measures as to the replacement of the shiftman with another employee.

The ground for engaging the employee in overtime work is the order (decree) of the employer. However, in all cases involvement in overtime work is possible only with the written consent of the employee.

The legislation provides categories of employees who may not be engaged in overtime work (pregnant women, having children under three years (Art. 176 of the LCU); persons under eighteen (Art. 192 of the Labor Code) and others).

15.2. The notion and kinds of rest hours

According to Art. 45 of the Constitution of Ukraine everyone who works has the right to rest. **Rest hours** *is the time during which the employee is free from performing work duties and which he/she may use at his/her discretion under the law and local regulations.*

Legislation establishes such rest hours as:

- breaks during the working day (shift);
- breaks between working days (shifts);
- rest between working weeks;
- holidays and nonworking days;
- annual leave.

Employees shall be provided with break for rest and meal lasting not more than two hours. The break shall not be included into the working hours. The break for rest and meal shall be usually provided in four hours after the start of work.

The time of the start and end of the break shall be established by internal regulations.

Employees shall use the break time at their own discretion. During this time they may be absent from the workplace.

At those jobs where because of production conditions the break may not be established the employee shall be provided with an opportunity to take meal during working hours. The list of these kinds of work, the procedure and

place of taking meal shall be established by the owner or body authorized by him/her as agreed upon with the elective body of the primary trade organization (a trade union representative) of the enterprise, institution or organization.

Besides, women having children under one and a half years old shall be granted, in addition to the general break for rest and meal, additional breaks for nursing. These breaks shall be granted at least every three hours for at least thirty minutes each.

If a woman has two and more infants, the duration of break shall be at least one hour. The periods and the procedure for granting breaks shall be established by the owner or body authorized by him/her as agreed upon with the elective body of the primary trade union organization (a trade union representative) of the enterprise, institution or organization with due regard for mother's wish.

Breaks for nursing shall be included into the working hours and shall be paid at the average salary.

In the case of a five-day working week employees shall be provided with **two days off** per week; with a six-day working week they shall have **one day off**.

A common day off shall be considered to be *Sunday*. The second day off with a five-day working week, unless determined by legislation, shall be determined in the work schedule of the enterprise, institution or organization as agreed upon with the elective body of the primary trade union organization (a trade union representative) of the enterprise, institution or organization, and shall be usually provided successively with a common day off.

If an official holiday or a non-working day (Art. 73) falls on the day off, the day off shall be deferred to the day following the official holiday or non-working day.

In order to create favorable conditions for using holidays and days-off, rational use of working hours, the Cabinet of Ministers can recommend the owners of enterprises, institutions, organizations, in the period not later than three month, to shift working days and days-off in the manner, established by the legislation for employees for whom a five-day week with two days-off is established. The owner or authorized body not later than two month shall issue an order to shift days-off and working days at the enterprise, institution or organization as agreed upon with the elective body of the primary trade union organization (a trade union representative).

Work on days-off shall be prohibited. Engagement of certain employees in work on these days shall be allowed only subject to permit of the elective body of the primary trade union organization (a trade union representative) of the enterprise, institution or organization and only in exceptional cases which are determined by legislation and in part two of Art. 71 of the LCU.

The list of holidays and non-working days is established in Art. 73 of the LCU. According to this article the following holidays are established in Ukraine:

1 January – New Year's Day; 7 January – Christmas; 8 March – International Women's Day; 1 and 2 May – the Day of International Solidarity of Workers; 9 May – Victory Day; 28 June – the Day of the Constitution of Ukraine; 24 August – Ukraine's Independence Day.

Work shall not be performed on religious holidays as well: 7 January – Christmas; one day (Sunday) – Easter; one day (Sunday) – Whitsun. At the request of religious communities of other (non-orthodox) confessions registered in Ukraine, management of enterprises, institutions or organizations shall provide persons practicing respective religions with up to three days of rest within the year for celebration of their great holidays.

Work on days-off and holidays shall be allowed because it may not be stopped because of manufacturing conditions (constantly operating enterprises, institutions or organizations), work caused by the necessity to service population and other cases. Work on a day off may be compensated for as agreed by the parties by providing another rest day or in monetary form at double rate.

The annual leave is the longest kind of rest hours. The procedure for granting that type of rest is provided in addition to the LCU by the law of Ukraine dated 15 November 1996 "On Leaves".

Leave is a certain number of days of uninterrupted rest as established by law, a collective or labor contract provided by the employer to the employee in a calendar year with payment or without payment, with saving the job (position) for the employee at that time.

Citizens having labor relations with enterprises, institutions or organizations irrespective of the ownership form, kind of activity and industry, as well as those working under a labor contract with an individual shall be provided with annual (basic and additional) leaves with preservation of the workplace (office) and salary for these periods. Foreign citizens and stateless persons working in Ukraine have a right to leaves as citizens of Ukraine.

According to Art. 4 of the law "On Leaves" there are the following types of leave:

1) an **annual leave**:

- basic;
- for work under harmful and severe working conditions;
- for specific character of work;
- in other cases prescribed by legislation;

2) an **additional leave for training**;

3) a **research leave**;

4) a **leave for training and participation in competitions**;

5) a **social vacation**:

- a maternity leave;
- a leave for caring for a child until he/she reaches three years of age;
- a leave in connection with adoption of a child;
- an additional leave to employees who have children, or an adult child – disabled from childhood of subcategory A of category I;
- an additional leave for certain categories of war veterans;

6) a **leave without pay**.

The legislation, a collective and labor contract may establish other types of leaves.

Annual (basic and additional) leaves are provided with preservation of the workplace (position) and salary for these periods. The duration of a leave is determined by the law "On Leaves", other laws and subordinate acts of Ukraine in calendar days.

Depending on the duration, the basic annual leave may be minimum and extended. An **annual basic leave** shall be given for a period of at least *24 calendar days* per working year the employee has worked to be calculated as from the date of entering into the labor contract (that is a *minimum leave* for persons who work under a labor contract). Persons aged under eighteen years shall be given an annual basic leave for a period of *31 calendar days*.

For particular categories of employees the legislation of Ukraine may provide other annual basic leave periods. With that, the period of their leaves may not be less than 24 calendar days. When determining the annual leave period official holidays and nonworking days shall not be included.

The days of temporary disablement of the employee proven in accordance with the established procedure, as well as maternity leaves shall not be included into annual leaves.

The right to an *extended leave* is granted to a significant number of employees. The purpose of that leave is to guarantee a longer rest to employees with regard to the nature and specifics of their labor activity, working conditions, health status, age and other circumstances.

A **research leave** shall be granted to employees for writing theses, textbooks, as well as in other cases prescribed by legislation. The period, procedure and conditions of granting and payment of research leaves shall be established by the Cabinet of Ministers of Ukraine.

The law of Ukraine "On Leaves" establishes such kinds of **social leaves** as:

- a paid maternity leave for a period of:

1) 70 calendar days prior to childbirth;

2) 56 calendar days as from the day of birth in case of birth of two and more children and 70 days in the case of birth difficulty;

- a childcare leave until the child reaches three years of age which may be also given to the child's father, grandmother, grandfather or other relatives actually caring for the child or adopters and guardians;
- a one-time leave for the person who adopted a child from the day of adoption for the period of 56 calendar days (70 calendar days in the case of adopting two and more children) with payment of a state allowance in accordance with the established procedure;
- an annual additional paid leave for a period of **10 calendar days** without regard for official holidays and nonworking days shall be granted to a woman working and having two or more children under 15 years, or a disabled child, or an adopted child, a child disabled from childhood of subcategory A of category I; a single mother; a father bringing up a child without mother or having a child disabled from childhood of subcategory A of category I (including the case of a prolonged staying at a patient care institution), as well as a person having taken a child under guardianship or a child disabled from childhood of subcategory A of category I; one of the adoptive parents.

In cases prescribed by Art. 25 of the law of Ukraine "On Leaves", the employee, at his/her will, must be granted a **leave without pay**. For family and other reasons the employee may be granted a leave without pay for a period stipulated in the agreement between the employee and the owner or body authorized by him/her, however for no more than 15 calendar days per year.

Questions for self-assessment

1. What kinds of working hours do you know?
2. What kinds of rest hours do you know?
3. What does the notion of reduced working hours imply?
4. What kinds of leaves do you know?

The practical task

The accountant Semko returned from a maternity leave. The duration of the leave was 126 days. The same day she filed her application for the next leave. The administration refused Semko on the grounds that, in general, she had worked at the plant for no more than 6 months.

Is it a legitimate refusal?

16. The labor discipline, disciplinary and material responsibility

16.1. The notion and content of the labor discipline

Successful development of a company, institution or organization is impossible without productive creative work of the team of employees. But interests of employers and employees do not always coincide. In most cases both want to get as much profit as possible from each other at the least possible cost. The condition of any collective work regardless of the economic branch, legal form of organization and socioeconomic relations in the society is labor discipline.

The law considers the category "labor discipline" in four ways: a) as an institution of labor law; b) as a principle of labor law; c) as part of labor relations; d) as actual behavior. As an institution of labor law, labor discipline is a complex of legal norms which regulate the internal labor schedule and determine labor obligations of the parties to the labor contract, as well as the methods of implementation of these obligations. As a principle of labor law, labor discipline is an obligation of employees to observe the labor discipline and the right of employers to require from employees the performance of only those duties that are established by current legislation, local acts and the labor contract. In addition, labor discipline can be an element of labor relations, which is the duty of the employee to obey the labor discipline of

a certain enterprise, its domestic internal regulations. Labour discipline as actual behavior is a condition and level of performance of labor duties by the employees at a particular enterprise, institution, organization.

The content of the labor discipline implies two sides – objective and subjective. The objective side is a certain order without which an enterprise cannot exist. This order is regulated by labor law and formed as a special specific part of law and order that is adapted to the conditions of production and operates within the enterprise in the form of internal labor regulations. The realization of duties and exercising of the rights of the parties to labor relations constitute the subjective side.

Observance of the labor discipline is provided by creating the necessary organizational and economic conditions for normal productive work, conscientious attitude to work, methods of persuasion, education, encouragement for diligent work. Methods of ensuring the labor discipline are stipulated by labor legislation, special means and techniques, including: coercion, encouragement, economic and organizational methods.

A necessary condition for improving the productivity and efficiency of labor is a clear labor schedule for each enterprise, institution, organization, and reliable organization of management. The **internal labor schedule** is the order of behavior and interaction between the employees and the employer in the process of implementation of labor activity in a certain company. This internal labor schedule defines the organization and order of work, and the related rights and obligations of employers and workers.

The internal labor schedule includes: a) the procedure for interaction between employee and employer, and b) the relationship between employees in the process of work. The elements of the internal labor schedule include: a) basic labor rights and obligations of employees and employers; b) the regime of working hours; a) the procedure for application of incentives; d) the procedure for bringing employees to responsibility.

The internal labor discipline and internal labor schedule cannot be considered in isolation from each other. Without providing a proper order of work there is no labor discipline. Therefore, the requirements of internal labor regulations are binding on all persons engaged in labor relations, both for employees and employers.

Normative legal acts which regulate the internal labor schedule are divided into:

1) acts of a general purpose (the Labor Code of Ukraine, typical internal regulations of employees and employers of enterprises, institutions, organizations, and others);

2) acts of a special purpose. They take into account the characteristics of branches of economy and specifics of work of certain categories of employees (special legislation, statutes and regulations about discipline, industry internal regulations, etc.).

The central place in the system of normative acts which regulate labor discipline is devoted to *internal regulations*. Internal labor regulations particularly regulate: 1) the organization of labor, conditions of staying in the territory of the enterprise, institution, organization during and after completion of work; 2) the procedure for employment and dismissal of employees; 3) the basic rights and obligations of the parties; 4) working hours and the procedure for the use of them; 5) the rest; 6) work incentives, grounds and procedure for using them; 7) the responsibility of employers and employees and other provisions. Internal labor regulations are divided into standard, branch and local.

Incentives to successful work are public recognition of the merits of the employee and his/her success at work. Incentives are an important tool (means) of education in the labor collective and strengthening of labor discipline. Every owner within the rights granted to him should encourage subordinates to exemplarily and conscientiously perform their job duties. The basis for the application of measures of encouraging the employee is his/her conscientious effective work, that is flawless execution of job duties, increasing labor productivity, improving product quality, long conscientious work and other achievements in work.

According to Art. 143 of the LCU any encouragement established in the internal regulations approved by the labor collective can be applied to employees of enterprises, institutions and organizations. In practice, the main types of incentives are: acknowledgment; issuance of a premium; rewarding with a valuable gift; awarding a diploma; entry to the Book of Honor and the Board of Honor. However, internal regulations of specific enterprises, institutions and organizations may also provide other incentives.

Thus, incentives are divided: a) depending on the method of influence on employees, into: *moral* (thanks, awarding diplomas, entry to the Book of Honor and the Board of Honor, etc.) and *material* (bonuses, rewards, etc.);

b) depending on the sphere of action, into: general, applicable to any worker, and special, applicable to certain categories of employees or certain sectors of the economy; c) depending on the subjects which use them, into: encouragements applied by the employer, and encouragement used by public authorities. Simultaneous use of several types of encouragement is allowed. During the term of disciplinary punishment, measures of encouraging shall not be applied to the employee.

Encouraging is provided by employers together or in coordination with the elected body of the trade union organization (a trade union representative) of enterprises, institutions and organizations. It is announced by the order (decree) of the employer in a festive atmosphere.

Regulations and statutes about discipline may establish specifics of the application of encouragements (the Disciplinary Statute of the Prosecutor's Office of Ukraine etc.).

Encouragements are entered into the work record card of employees in accordance with the rules of keeping them. Employees, who successfully and conscientiously perform their work duties, get primarily benefits and social benefits within the powers at the expense of the company, institution, organization (vouchers to sanatoriums and rest homes, better housing and so on).

Since the time of acquiring independence, in accordance with the Constitution of Ukraine, an awarding system of Ukraine has been created. The legislation on state awards consists of the Constitution of Ukraine, the law of Ukraine dated March 16, 2000 No. 1549-III "On State Awards" and decrees of the President of Ukraine. Art. 3 of the law of Ukraine "On State Awards" includes such types of state awards as: the title of the Hero of Ukraine; the Order; the Medal; the award "The Nominal Firearm"; the honorary title of Ukraine; the State Prize of Ukraine; the presidential award.

16.2. Disciplinary responsibility

Disciplinary responsibility of the employee is one of the types of legal liability established by legislation for the wrongful conduct of the employee. It is the obligation of the employee to be punished according to the norms established by labor legislation for wrongful nonperformance or improper performance of his/her job duties.

The ground for disciplinary liability is *disciplinary misconduct*. In the theory of labor law, misconduct is defined as culpable wrongful non-performance or improper performance of employee's job duties. Disciplinary misconduct

as any other offense may be described as a combination of its constituent elements: the subject, the subjective side, the object, the objective side.

The *subject* of the disciplinary misconduct is a natural person of sound mind who, being in labor relations (an employee), committed a disciplinary misconduct. There are general and special subjects. The former is the person subject to the general norms of the discipline (the Labor Code of Ukraine, internal regulations, etc.), the latter is the person subject to special ones (laws, statutes, provisions as to the discipline of certain categories of workers).

The *object* of the offense is the internal labor schedule, including such its element as work duties.

The *subjective side* of misconduct is guilt that is the mental attitude of the employee to the committed action or inaction and its consequences, expressed in the form of intent or negligence. Intent means that the employee was aware of the illegality of his/her conduct (action or inaction), foresaw its harmful consequences and wished their occurrence or deliberately assumed their occurrence. Negligence means that the employee was aware of the wrongfulness of his conduct (action or inaction), foresaw its harmful consequences but thoughtlessly expected preventing them or did not foresee, although had to and could foresee them.

The objective side of the disciplinary misconduct consists in the wrongful conduct of the subject, harmful consequences and a causal link between them. Wrongful conduct is action or inaction of the employee who violates the requirements of the labor legislation, local acts, orders or instructions of the employer, establishing work duties of the employee.

There are two types of disciplinary liability: general and special. The general disciplinary liability comes under the provisions of the Labor Code of Ukraine and internal regulations. It applies to all persons, except those who are subjects of special disciplinary responsibility. Special disciplinary liability is provided for certain categories of employees with special legislation, statutes and regulations on the discipline.

The main difference between the special and general disciplinary responsibility is the following:

1. The range of persons to whom it applies.

Thus, the disciplinary regulations for railway employees apply only to the employees of enterprises, associations, institutions and organizations of the railway transport belonging to the state property.

2. The types of disciplinary penalties.

Thus, legislation, statutes and regulations on the discipline may establish other than general sanctions (a reprimand and dismissal) to certain categories of employees. For example, Art. 9 of the Disciplinary Statute of the Prosecutor's Office of Ukraine on the disciplinary action includes: a reprimand; relegation in the class rank; demotion; deprivation of the breast-plate "Honorary Officer of the Prosecution of Ukraine"; dismissal; dismissal with deprivation of the class rank.

3. Persons who can apply disciplinary penalties.

Special disciplinary responsibility may also be applied by supervisors or managers.

4. The procedure of application of penalties.

5. The procedure for appealing against the applied disciplinary penalties.

According to Art. 147 of the LCU only one of the measures of punishment – a **reprimand or dismissal** – can be applied to the employee for violation of the labor discipline. Only special legislation, statutes and regulations on the discipline can provide other disciplinary sanctions for certain categories of employees. As the disciplinary sanctions list must be comprehensive in nature, employers cannot set other additional sanctions. In the case of disciplinary action the owner or authorized body in any case should not humiliate the dignity of the employee.

Dismissal of an employee on the grounds established by: part 3 (systematic failure, without good reasons, of the employee to fulfil obligations imposed on him/her under the labor contract or internal regulations if disciplinary or civil sanctions have been previously applied thereto), part 4 (absence from work (including absence from work for over three hours during the working day) without good reasons); part 7 (appearance at work intoxicated with alcohol, narcotics or other toxic substances); part 8 (on-the-job embezzlement (including the petty one) of the owner's property established by court judgment that became effective, or by the resolution of the body whose competence includes imposing administrative sanctions or taking measures of social influence) of Art. 40, and part 1 (single gross violation of labor obligations by the director of the enterprise, institution or organization of all forms of ownership (a subsidiary, a representative office, a division and other separated subdivision), his/her deputies, chief accountant of the enterprise, institution or organization, his/her deputies, as well as officials of

customs authorities, state tax inspectorates who were given personal ranks, and officials of state supervision and auditing service and state authorities exercising control over prices) of Art. 41 of the Labor Code of Ukraine, is a disciplinary sanction (part 22 of the Resolution of the Supreme Court of Ukraine "On the Practice of Labor Disputes in Courts"). Therefore, dismissal on these grounds is possible only in compliance with all rules of disciplinary sanctions.

Disciplinary sanctions are applied by the authority which is granted by the right of employment (selection, approval and appointment) of a certain employee. Doing that an employer must comply with the terms of the application of the disciplinary sanction. A sanction is applied by the employer immediately after detection of a misconduct, but not later than one month from the date of detection. The day of detection of the disciplinary misconduct is the day when the official became aware about the offense, regardless of whether that person is endowed with the right to impose sanctions or not. Disciplinary penalties cannot be imposed later than six months from the date of commission of the misconduct. These terms do not include the proceedings in a criminal case. In cases when law establishes criminal liability for the committed misconduct, the manager is obliged to transfer the relevant materials to the inquiry or preliminary investigation bodies.

The fact of the commission of the disciplinary misconduct should be properly recorded in acts, certificates, memoranda and so on. Before applying a disciplinary sanction the employer must request an explanation in writing from the offender of the labor discipline.

For each violation of the labor discipline only one disciplinary sanction may be imposed. However, if actions of an employee caused property damage, it is possible to combine disciplinary and material liability because they have different purpose (the same with combining administrative and disciplinary, criminal and disciplinary liabilities).

The order about the application of disciplinary punishment, specifying the reasons for its application is declared to the employee under the signature in three days. In the case of refusal of the employee to sign the act, it is signed by the person certifying that fact. According to Art. 48 of the LCU the data on the disciplinary sanctions shall not be entered to the work record card. During the term of the disciplinary punishment, encouragement measures shall not apply to the employee.

16.3. The notion of the grounds and conditions of material responsibility of employees for damage caused to an enterprise, an institution, an organization

Material liability of the parties to the employment contract is the obligation of one party of the employment contract (employee or employer) to compensate the damage caused to the other party by guilty, unlawful, failed or improper fulfillment of his/her job duties.

Thus, depending on who caused the damage, material liability in the employment relations is divided into the following types: liability for damage caused by the employee to the employer, and the employer's liability for damage caused to the employee.

The **ground** for material liability is *labor offense against property*. It is different from fine, disciplinary liability, deprivation of bonuses, and remuneration for collective contribution to work per year. Fine is an administrative punishment for an administrative offense, not indemnification of damages. Labor legislation of Ukraine does not establish fines to employees for improper performance of their work duties (Art. 147 of the Labor Code).

A disciplinary sanction may be applied on the ground of the labor disciplinary offense without actual direct damage to employer's property. Its purpose is to affect the offender of the labor discipline by imposing an obligation to bear the unfavorable legal consequences of personal, financial, organizational nature for the violation of employment duties to influence his mind and will and change them in the direction established by the employment contract.

Imposing material liability on the employee has three goals. The main goal is to protect the employer from property damage, loss, theft and provide compensation for damage caused by the employee. The second goal is to protect the employee from excessive wage, illegal and unjustified sanctions. The third goal is to educate the employee as to careful attitude to the property of the employer to prevent new damage to the employer's property.

The main differences of material liability of the employee from property civil liability are:

1. The subject of material liability in accordance with labor legislation can only be an employee who, being in labor relations with the employer, inflicted property damage as a result of abusing of his/her duties under the employment contract. A person who is not in the employment relations with

the employer or caused him/her property damage without connection with legal relations cannot be subject to material liability. It will be responsible according to the civil law norms.

2. Material liability of an employee arises from labor legislation if the property damage is caused to the employer in connection with his/her duties under the employment contract.

3. The employee liability arises from the norms of civil law (Art. 1166, 1202 of the Civil Code of Ukraine) in the case where he/she caused damage by *self-willed personal use* of technical means (cars, tractors, cranes, etc.) of the employer with whom he/she is in labor relations.

4. Liability of an employee under employment relations is personal in nature. This is due to the fact that the employee should perform his/her duties personally (Art. 30 of the Labor Code of Ukraine).

The employer is not exempt from the obligation to prove the employee guilty of causing him harm (Art. 138 of the Labor Code of Ukraine).

5. In the event of causing material damage by several persons, labor law implies joint responsibility. Joint and multiple liability is possible only when the damage is caused by criminal acts of several persons.

6. Liability of an employee under the labor law lies only in the obligation of indemnification of damage caused to only existing property of the employer. Loss of profits, unreceived revenue by the employer shall not be subject to compensation (part 4 of Art. 130 of the LCU).

7. Liability of employees under the labor law depends on their different categories and different employment situations and forms of guilt. Labor legislation, as a rule, provides limited material liability, limited to a certain part of the salary of the employee and should not exceed the full size of the caused damage, except as provided by law.

8. Liability of an employee under labor legislation comes only if there is his/her guilt for causing material damage to the employer.

9. The burden of proving fault of the employee in causing property damage lies on the employer because he has to properly organize his work and create conditions for normal work and ensure the full saving of the property entrusted to him/her.

10. Labour legislation provides a special procedure for the recovery of the property damage caused by the employee:

a) the damage caused by the employee is charged by the order (decree) of the employer;

b) damage may be charged only within the monthly average salary of the employee; if the damage exceeds this limit, the employer must apply to court;

c) the employer may issue an order for the recovery of damages from the employee's salary in the term no longer than two weeks from the time he became aware of the damage;

d) the limitation period for applying to the court by the employer for compensation for the caused damage is one year from the day when the employer became aware of such damage. After this period the employee is exempt from the obligation to compensate the damage caused to him.

11. If the employee disagrees with the order (decree) of the employer to recover damage from his/her salary or the size of the compensation, he/she has a right to put it in issue in court or commission for labor disputes according to the procedure prescribed in the LCU.

These features of the material liability for the employee according to labor legislation give reasons to believe that responsibility is a special legal institution inherent only in labor law, which differs from all legal institutions of material liability in other branches of law. These features are due to the peculiarities of labor relations, necessity for social protection of employees.

The **grounds and conditions for liability of employees.**

The ground for material liability of employees is labor offense against property which is failure or improper fulfillment of employee's work duties, resulting in material damage to the company, institution or organization. Conditions for arising material liability of the employee are:

1) direct real damage;

2) unlawful behavior of the employee;

3) fault in action or inactivity of the employee;

4) a direct causal link between the unlawful and guilty action or inactivity of the employee and damage.

Illegal behavior is the behavior of an employee who does not fulfill or improperly performs his/her work duties provided by the requirements of law, labor contracts, orders and instructions of the employer. The forms of wrongful conduct are unlawful actions or wrongful inactivity.

A fault of an employee is his psychological attitude to his/her wrongful act and its consequences, the inner side of the wrongful conduct. Depending on the combination of intellectual and volitional characteristics they distinguish

the following forms of guilt: intent (direct and indirect) and negligence (self-confidence and carelessness).

The causal link between the unlawful and guilty action or inactivity of the employee and property damage must be direct.

These four elements of labor offense against property create a legal composition of labor property offenses. In the absence of one of these elements there will be no grounds for bringing the employee to liability.

Types of liability of employees. Depending on the procedure of applying, size and scope of damage compensation, the liability of the employee under labor legislation can be of two types – limited or full. The main type of liability is the limited one. It applies to all employees, regardless of the organizational or functional manner of work of the labor collective. Full liability is involved in some cases provided by labor legislation.

Depending on the form of organization of work, labor law distinguishes individual material liability and collective (brigade) liability.

Limited liability of employees. The essence of limited liability is that the employee must pay for the caused property damage in the amount of damage, but no more than his average monthly earnings.

Limited liability occurs in all cases, if there is no reason to bring the employee to full liability, as well as in the cases established in Art. 133 of the LCU. Labor legislation does not determine an exhaustive list of cases when limited liability is applied to the employee. Limited liability of the employee arises for any property damage caused to the employer. It can be caused by corruption or destruction of materials, semifinished goods, products, tools, measuring instruments, clothing and other items issued by the employer to the employee for use, as well as equipment, machinery etc. If the employee intentionally causes damage he/she will bear material liability.

Full liability of employees. The essence of full liability is that the employee has a duty to be responsible for damage in full without any restrictions. These cases are:

1. A written agreement concluded between employee and employer on taking over full liability by the employee for failing to ensure the integrity of the property and other assets transferred to him/her for saving or other purposes.

2. Receiving property and other valuables by the employee on account of a one-time power of attorney or other one-off documents.

3. Harm caused by the actions of the employee, which has features of crime.

4. Damage inflicted by the employee who was drunk.

5. Damage caused by lack, intentional destruction or intentional corruption of materials, semifinished goods (products), as well as tools, measuring devices, special clothes and other items issued by the employer to the employee for use.

6. Damage caused by the employee to enterprises, institutions and organizations during execution of job duties (for cashiers, employees of automobile transport for spending too much fuel etc.).

7. Damage caused in the time other than during performance of job duties.

8. Officials are guilty of illegal dismissal or transfer of the employee to another job.

9. The heads of enterprises, institutions, organizations of all forms of property, are guilty of late payment of wages for more than one month, which led to the compensation for violation of the terms of payment.

Questions for self-assessment

1. What is labor discipline?

2. What are the grounds for disciplinary responsibility?

3. What are the grounds and conditions for material responsibility of employees for damage caused to the enterprise, institution, organization?

4. What is the difference between material liability and property civil law liability?

The practical task

The gym teacher of secondary school No. 4 Kucherenko was dismissed on February 12, 2013 on the ground of part 3 of Art. 41 of the Labor Code of Ukraine for committing an immoral action. The complaint of the high school students' parents dated December 1, 2012 stated that Kucherenko insulted students, used bad words in their presence in the gym class.

Kucherenko filed a claim for reinstatement. He thinks that his dismissal is unlawful because one month has already passed since the moment of detection of the misconduct.

1. What procedure is established for applying disciplinary penalties?

2. What decision should the court take?

17. Administrative responsibility and other means of administrative compulsion

17.1. The notion of administrative legal relations and the administrative law

Administrative law is a large, the most mobile, unstable and difficult of all the existing legal branches. The issues of administrative legal regulation cover all spheres of state or social life. Its norms regulate the activities of the executive authorities, local governments, state and non-state enterprises, institutions and organizations.

Administrative law is the branch of law, whose norms regulate relations in society that arise in the organization and implementation of executive power, as well as relations connected with internal activities of state bodies, organizations, local governments, applying administrative sanctions of influence and coercion for appropriate organization of joint activities of people and their associations, to ensure efficient cooperation in order to achieve a certain intended result.

Administrative law is a clearly defined system of norms, which are combined into general, specific and special parts.

The *general part* incorporates the norms concerning the basic principles of governance, the legal status of the subjects, forms and methods of their activities, the administrative process, and ways to ensure legality in public administration.

The *specific part* combines the norms governing the management of the economy, transport, social and cultural development, communications, and so on.

The *special part* combines the norms governing administrative and legal activity of subjects of management in specific areas of the economy. For example, administration activity of the bodies of internal affairs, of the customs control bodies and so on.

There are such legal institutions in administrative law as:

- public service;
- administrative responsibility;
- the local government and others.

The impact of administrative norms is aimed at the organic functioning of the executive branch bodies. Therefore, the **subject** of administrative law

is public relations arising in connection with the state governance, as well as the norms governing the internal organization of the activity of state bodies, state organizations, and local authorities.

Administrative law is a public branch of law.

The **method** of administrative legal regulation implies techniques and ways for the subjects of administrative law (persons having the state-management powers) to impact on the behavior of other members of the administrative and legal relations (the objects of governance).

The methods of regulation of relations in the administrative law are:

- the overbearing method (imperative);
- the method of recommendation;
- the method of coordination;
- the method of equality of participants in administrative legal relations.

Administrative legal methods provide for regulation of relations through the establishment of a specific order of actions or prohibitions against actions undesirable for society, giving the opportunity to the participants in legal relations to choose legal actions when solving specific issues or to decide whether to do or not to do the actions, provided by a legal administrative norm in specific circumstances.

Governance (management) as the o*bject of administrative and legal regulation* is special relations between people, based on the legal and organizational basis. Those are relations between different statuses, between different levels of administrative structures, certain functions which manifest themselves in the form of one-sided dependence of one administrative position on the other one.

The objects of governance (management) are:

- public work;
- government and nongovernment bodies and organizations;
- individuals;
- technical means;
- animal and plant organisms.

So depending on the object, management is divided into three types:

- technical (process);
- biological (plant and animal);
- social.

Social management is people management, it can be public (state) and private.

State governance is carried out by all bodies of the state which are distributed between the different branches of power, i.e. law determines the executive activity of the special bodies of the state to implement the direct organization of all the structures of society and the regulation of social processes.

Public administration is characterized by:

- subordinate character;
- external formally defined content;
- direction from the executive power;
- normativity;
- obligatoriness that is being provided by coercive power of the state apparatus.

The task of state governance is to save the functioning of the existing systems in the country, implementation of programs aimed at achieving this goal, really provided by legislative basis, material and human resources, a reliable channel for feedback and objective information.

State governance includes the economic, political, social, cultural, military, internal organizational and other kinds of control. It should be emphasized that the executive branch does not cover all forms of government, since it is performed outside the executive branch as well.

The content of the state governance is a set of functions which are called management functions. Management activity includes: the planning function; the organizational functions; the function of personnel work; governance and decision-making; coordination; reporting and control; budget formulation and execution.

State control is carried out by specially authorized entities having public authority and it is associated with the impact on control objects, which are legal entities and individuals who do not have authority.

The *subjects of administrative law* are the participants in public relations, who are endowed with management rights and responsibilities by administrative norms.

A person may be the subject of administrative law only if he/she has the administrative legal capacity and administrative active legal capacity.

State authorities and management, as well as other entities, including natural persons have administrative legal capacity.

The subjects of administrative law can be classified into: 1) collective subjects (public bodies and organizations etc.); 2) individual subjects (citizens of Ukraine and others).

The administrative legal status is determined by the volume of their administrative legal personality which consists of administrative legal capacity and administrative legal active capacity.

Administrative legal capacity is the ability of a person to be the bearer of subjective legal rights and obligations in the relevant field. The legal capacity of a person arises from the moment of birth. It is a basis of administrative active legal capacity of citizens, or the condition for its implementation, extension of subjective rights and duties of citizens.

Administrative legal active capacity is the ability of citizens, recognized by the state, to exercise their personal rights and acquire new administrative rights, carry out duties in the sphere of executive branch, be responsible for administrative offenses. It arises at the age of 18, and in some cases – at 16 years, and in exceptional cases at the age of 7 years.

17.2. Administrative responsibility as a kind of legal liability

Administrative responsibility as a kind of legal liability, has the following features: 1) it is external; 2) it is only applied to the offense; 3) it is associated with state coercion in the forms of punitive and legal restorative measures; 4) it is defined in the legal norms; 5) bringing the offender to responsibility is carried out in a special procedural order; 6) liability is imposed by the authorized state bodies and officials; 7) the person guilty of the offense bears certain material and domestic losses which are provided for by law.

Administrative liability is a kind of legal responsibility established by the state in the administrative legal norms that can be applied by competent authorities of the state in a special procedural order to the persons who have committed administrative offenses and that aims to deprive them of some of their personal, financial or organizational boons. This responsibility has certain characteristics:

- it has a public state mandatory character;
- it is established by the state in the sanctions of norms of the Special Part of the Administrative Code and other laws;
- it applies to individuals and legal entities in the case of the presence of an administrative offense in their actions;
- it is used by the courts and a wide range of competent authorities and their officials as well as local authorities (a list of these bodies is defined in the third section of the Administrative Code);

- it is used in the administrative and procedural order defined in Art. 245–297 of the Administrative Code;
- it is concretized in administrative sanctions, the list of which is enshrined in Art. 24 of the Administrative Code;
- it does not entail a criminal record.

17.3. An administrative offense (misdemeanor), its features and composition

An administrative offense (misdeed) shall be regarded as consisting of an unlawful, guilty (deliberate or negligent) act or failure to act, which infringes on public order, property, citizens' rights and liberties, or established procedure of management, and for which administrative liability is provided for in the law.

Administrative misconduct is characterized by the following *features*:

1) administrative wrongfulness, i.e. violation of the special part of the Administrative Code of Ukraine, the Customs Code of Ukraine, the law of Ukraine "On Basic Principles of Prevention and Combating Corruption" and others;

2) social harm, that is, the onset of socially harmful consequences of an administrative unlawful act or the threat of such consequences;

3) fault (intentional or negligent);

4) administrative punishment, that is the possibility of imposing of penalties established in the sanctions for the violated administrative norm on the offender.

The composition of the administrative offense includes four elements:

the object of the offense;

the objective element of the offense;

the subject of the offense;

the subjective element of the offense.

The **object** of the administrative offense is public relations regulated by norms of various branches of law.

The **objective element** of an administrative offense is characterized by: an administrative unlawful act (an act or failure to act); socially harmful consequences or threat of their occurrence; the causal link between the unlawful act and its consequences; additional characteristics (time, place, manner, conditions of committing the offense).

The **subject** of the administrative offense is the person who committed it. This may be a natural or legal person. In accordance with Art. 12 of the Administrative Code the subject may be an individual of 16 years who is sane.

The **subjective element** of an administrative offense is characterized by an inner mental attitude of the subject to his/her own misconduct and its consequences; it is specified by: guilt (intentional or negligent); the purpose of committing the offense; the motive which prompted the person to perform illegal actions.

The presence of all the four elements of an administrative offense is the only factual basis necessary for bringing those persons to administrative responsibility.

17.4. Administrative penalties and general rules for the imposition of administrative penalties

Administrative responsibility is realized through application of administrative penalties that constitute a system of measures of administrative responsibility for guilty persons. A common feature of administrative penalties is their educational, repressive, punitive and preventive character. They are only applied to individuals guilty of administrative offenses.

Administrative penalties typically lie in the lack or limitation of certain rights or benefits. In this way the goal to punish the offender, prevent the commission of new offenses is achieved. But punishment is not an end in itself, it is a necessary means for educating the offender and prevention of violations. So it is possible to give a definition of an administrative penalty as coercive measures taken with respect to persons guilty of committing an administrative offense used by authorized government bodies, usually the executive branch, for the name of the State.

The following system of **administrative penalties** established in Art. 24 of the Administrative Code of Ukraine (ACU) may be applied for committing an administrative offense:

1) warning;

2) fine;

3) penalty points;

4) paid seizure of the item that was the instrument of committing an administrative offense or its direct object;

5) forfeiture of the item that was the instrument of committing an administrative offense or its direct object; of the money received due to committing an administrative offense;

6) deprival of a special right granted to the citizen concerned (the right to driving, the right to hunting);

7) community service;

8) correctional labor;

9) administrative arrest;

10) arrest with placement in the guardhouse.

In addition to the types of administrative penalties specified in this Article, laws of Ukraine may establish other types of penalties.

When imposing penalties they take into account the nature of the committed offense, the individual offender, the degree of his/her guilt, the property condition, the circumstances that mitigate and aggravate liability, except imposing penalties for violations in the field of road safety.

The offender is characterized, first of all, by the features inherent in the subject of the offense (age, gender, service and social status, illegal behavior in the past), and behavior in the workplace and at home, the attitude to family, work colleagues, training and more. All these factors must be determined by the body (official), which considers the case to be fully aware of the identity of the offender.

When one person has committed two or more administrative offenses administrative penalty is imposed for each offense separately (part 1 of Art. 36 of the ACU). Such order of applying penalties is used due to the fact that cases of administrative offenses of the same person are often solved by various state bodies (officials) within their jurisdiction.

An administrative penalty may be imposed no later than two months from the date of the offense, while in the case of a continuing offense it should be done not later than two months after detection, except when cases of administrative violations under the ACU are under the jurisdiction of the court (judge).

If cases of administrative violations are under the jurisdiction of the court (judge), penalty may be imposed no later than three months from the date of the offense, while in the case of a continuing offense it is done no later than three months after detection, except cases established by the law.

Imposition of administrative penalties leads to certain adverse legal consequences for the offender. First, repeated committing a similar offense

during the year for which the person has been subjected to administrative penalties is recognized as an aggravating circumstance. Second, the law on administrative offenses often considers repetition as a qualification circumstance. Third, in some cases, recommitting similar offenses leads to criminal liability. In this regard Art. 39 of the ACU sets the period after which the person is deemed to have not been subjected to administrative penalty. This period is calculated from the end of the administrative penalty and is one year.

Questions for self-assessment

1. What are the features of administrative responsibility?
2. Characterize administrative relations.
3. What elements of administrative offense do you know?
4. What kinds of administrative penalties do you know?

The practical task

A driver, because of an urgent need to help a woman who got in an accident and needed immediate medical attention, exceeded speed and was stopped by the traffic police. Will the driver be liable, according to Art. 122 of the Administrative Code of Ukraine (Exceeding the speed limit by vehicle drivers)? Why do you think so?

18. The general notion of the criminal law and criminal responsibility

18.1. The concept and structure of the criminal law in Ukraine

Criminal law is a branch of law in Ukraine, that is, the system of legal norms established by the state in the criminal law, which regulate the public relations related to crime and punishment for it, provided by coercive force of the state apparatus.

The only source of criminal law is criminal law, the Criminal Code of Ukraine which was enacted on April 5, 2001. The objective of the Criminal Code of Ukraine is to provide legal protection of rights and liberties of a human being and citizen, property, public order and public safety, the environment, and the constitutional order of Ukraine against criminal

encroachments, to secure peace and safety of mankind, and also to prevent crime. To this end, the Criminal Code defines which socially dangerous acts or omissions count as offenses, and which punishments are to be imposed upon persons who commit them.

The *objective of the criminal law* is also legal provision of protection of the rights and freedoms of man and citizen, property, public order and public security, the environment, the constitutional system of Ukraine from criminal encroachments, to ensure peace and security of citizens, as well as crime prevention.

The subject of the criminal law is public relations arising in connection with the commission of crime and applying a corresponding punishment by competent authorities of the state (courts) established by the criminal law.

The *methods* of the criminal law are:

- defining which socially dangerous acts or omissions count as offenses;
- establishment of punishment for violation of the prohibitions established in the articles of the special part of the Criminal Code of Ukraine.

The criminal law of Ukraine consists of the general and special parts.

The norms of the general part establish the basic principles of the criminal law and regulations related to any crime defined in the special part of the Criminal Code:

- the notion of crime, its types and stages;
- the concept of the subject of crime;
- guilt and its forms;
- complicity in crime;
- repetition, accumulation of criminal offenses and recidivism;
- circumstances excluding criminality of an act;
- discharge from criminal liability;
- punishment and its types;
- imposition of punishment;
- discharge from punishment and from serving it.

The norms of the special part of the Criminal Code concretize the acts which are crimes and distribute them into separate sections:

- crimes against the foundations of national security of Ukraine;
- crimes against human life and health; crimes against freedom, honor and dignity;
- crimes against sexual freedom and sexual inviolability;

- crimes against electoral, labor and other personal rights and freedoms of man and citizen;
- crimes against property;
- crimes in the sphere of economic activity and others.

The norms of the special part of the Criminal Code define sanctions, which include measures of criminal liability, adequate to social danger of the committed crime.

18.2. The general notion of crime and its types

Criminal liability is the most severe type of legal liability, established by the state in the sanctions of articles of the special part of the Criminal Code that is applied only by the court in the criminal procedure to the subject of the crime and it deprives the perpetrator of certain material, organizational or personal goods belonging to him.

Criminal liability is realized through the criminal legal relations arising between the state and the person who committed the criminal wrongful act, that is, the person is incriminated (is blamed for) a socially dangerous act committed by him.

Criminal liability is characterized by the following features:

- it is established by the state only in the criminal law;
- it shall be imposed only by court;
- the procedure of bringing the perpetrators to responsibility is defined in the Criminal Procedure Code of Ukraine;
- it has individual character and relies only on the person whose act has corpus delicti;
- it is concretized in criminal punishment, defined in the sanctions of the articles of the special part of the Criminal Code;
- it is related to the deprivation of the perpetrator of certain property, organizational or personal goods belonging to him;
- it is connected with certain negative consequences in the form of a criminal record.

Criminal liability is realized when it is applied as determined by a court sentence criminal punishment to a person for the crime committed by him and when he/she is in a state criminal record.

Criminal liability is realized through the following stages:

- arising of criminal responsibility (criminal proceedings);

- qualification of the acts of the perpetrator as accused by the competent authorities of the state (the police, the Security Service of Ukraine, the Prosecutor's Office, etc.);
- sentencing by the court and concretizing the criminal punishment in a verdict;
- serving a sentence;
- person's stay in the state of conviction.

Criminal liability is terminated by the fact of cancellation or revocation of conviction. A person shall be held to have a conviction from the date on which the judgment of guilty enters into force and until the conviction is cancelled or revoked. Criminal law in Art. 89 of the Criminal Code defines the conditions for cancellation of conviction.

If a person, who completed his/her sentence of restraint of liberty or imprisonment, displays good conduct and diligent work as a proof of his/her rehabilitation, a court may revoke its conviction before the expiration of the period.

A person is *deemed innocent* of a crime and may not be criminally punished until his/her guilt is legally proven and found by a lawful sentence.

No person may be prosecuted more than once for the same offense.

A **criminal offense** shall mean a socially dangerous culpable act (action or omission) prescribed by the Criminal Code and committed by an offender.

Although an act or omission may technically have any elements of an act under this Code, it is not an offense if, due to its insignificance, it is not a social danger, i.e. it neither did nor could cause considerable harm to any natural or legal person, community, society or the state (Art. 11 of the Criminal Code).

The criminal offense is characterized by such features as:

- criminal wrongfulness, i.e. action (or omission) is directed against the ban defined in a specific article of the special part of the Criminal Code;
- social danger of the act, which manifests itself in the occurrence or threat of socially dangerous consequences;
- guilt that is the mental attitude of the person to his/her actions or omission prescribed by the Criminal Code, and its consequences, as expressed in the form of intent or negligence;
- criminal punishing that is concretized in the sanctions of articles of the special part of the Criminal Code as criminal punishment.

All the defined features are the basis for initiating criminal proceedings by competent authorities.

A crime (criminal offense) takes place only when a socially dangerous act contains corpus delicti, that is, a complex of objective and subjective elements that characterize the act as a crime. The elements of the offense are:

1) the **object of the crime**, i.e. public relations, which are protected by criminal law and which suffer criminal encroachments (relations of life, human health, property relations, environmental relations, etc.);

2) the **objective element** (actus reus), i.e. the external manifestation of a socially dangerous act, which is characterized by such features as:

- a socially dangerous act (an act or omission of a person);
- socially dangerous consequences;
- a causal link between the act and the socially dangerous consequences;
- the place, the time, the manner, the instrument and condition, the situation of committing the crime;

3) the **subject of the crime (a criminal offender)** i.e. a sane person who has committed a criminal offense at the age of criminal liability which may arise according to Art. 22 of the Criminal Code (persons who have reached the age of 16 years before the commission of a criminal offense shall be criminally liable. Persons who have committed criminal offenses at the age of 14 to 16 years shall be criminally liable only for crimes established in the list of Art. 22). The subject of the crime can be special with the following additional features:

- citizenship of Ukraine of the person who committed high treason (Art. 111 of the Criminal Code);
- citizenship of a foreign state or the fact of being a stateless person when committing espionage (Art. 114 of the Criminal Code);
- being mother of a newborn child in the case of infanticide (Art. 117 of the Criminal Code);
- being a medical professional failing to provide help to a patient (Art. 139 of the Criminal Code) and others;

4) the **subjective element** of the crime is the inner mental activity of the person associated with the commission of a socially dangerous act, which is characterized by the following features:

- **guilt** which shall mean a mental stance of a person in regard to the performed act or omission under the Criminal Code and to the consequences thereof, as expressed in the form of *intent or recklessness*;
- the **purpose**, i.e. mental imagination of the person concerning the desired result which he/she seeks to achieve when committing a crime;
- the **motive**, that is, mental motivation of the person for illegal acts (mercenary motives, personal reasons etc.);
- **emotions** (there is a condition of strong excitement raised by improper or immoral actions of the victim).

The presence of all the four elements of the crime is the only actual basis for criminal liability of the person.

Depending on various criteria, crimes are divided into various groups:

1) depending on the generic object of the crime:

- crimes against life and health;
- crimes against freedom, honor and dignity;
- crimes against sexual freedom and sexual inviolability of an individual and others as defined in certain sections of the special part of the Criminal Code;

2) depending on the gravity, criminal offenses shall be classified as:

- *minor offenses* (offenses punishable by imprisonment for a term up to two years or a more lenient penalty);
- *medium grave offenses* (punishable by imprisonment for a term up to five years);
- *grave offenses* (offenses punishable by imprisonment for a term up to ten years);
- *special grave offenses* (offenses punishable by more than ten years of imprisonment or a life sentence);

3) depending on the form of guilt of the person:

- intentional crimes;
- negligence crimes;
- crimes committed in the mixed form of guilt.

18.3. The stages of crime

The **stages of crime** are the stages of preparation and commission of a crime as defined by law.

The Criminal Code defines two stages of precriminal activities related to the commission of a crime:

1) **preparation for crime** shall mean looking out or adapting means and tools, or looking for accomplices to, or conspiring for an offense, removing obstacles to an offense, or otherwise intended conditioning of an offense.

Some preparation can make other consummated (finished) crime (for example, carrying, storing, purchasing, producing, repairing, transferring or selling firearms (other than smoothbore hunting guns), ammunition, explosive substances or explosive devices without a permit required by law has corpus delicti prescribed by Art. 263 of the Criminal Code).

Preparation for a minor offense does not entail a criminal liability.

2) **a criminal attempt** shall mean a directly intended act (action or omission) made by a person and aimed directly at the commission of a criminal offense prescribed by a relevant article of the special part of the Criminal Code, where this criminal offense has not been consummated for reasons beyond that person's control.

An attempt to commit a crime can be:

- *consummated* where a person has completed all such actions as he/she deemed necessary for the consummation of an offense, however, the offense was not completed for the reasons beyond that person's control;
- *unconsummated* where a person has not completed all such actions as he/she deemed necessary for the consummation of an offense for the reasons beyond that person's control.

Execution of the objective element of a crime (actus reus) begins with the attempt.

As to **subjective element**, the preparation and attempt to commit a crime is only possible with direct intent.

Some crimes have no such steps as preparation or a criminal attempt. So, leaving a person without help in a life-threatening condition has no such steps (Art. 135 of the Criminal Code), as well as other crimes with formal composition. Crimes with formal composition are consummated from the moment of realization of the action, regardless of the consequences, and have corpus delicti.

Criminal liability for preparation and criminal attempt occurs according to that article of the Criminal Code, which provides liability for consummated (completed) crimes.

Criminal complicity is willful coparticipation of several criminal offenders in an intended criminal offense.

Committing a crime of complicity increases public danger as compared with a similar crime committed by one person, because:

- together it is easier to prepare and commit a crime;
- it is easier to hide the perpetrator, the instruments of the crime and the means of fulfillment, traces of the crime, as well as the items obtained by the criminal means.

The *features of complicity* are:

- coherence of actions of accomplices in a criminal offense (conspiracy in the joint commission of a crime);
- mutual understanding of the joint commission of a crime (a pre-requisite for a crime is the actions of each accomplice, as a socially dangerous consequence is the result of the joint action of all the accomplices);
- participation of two or more persons in crime, each of which is a subject of criminal liability (a criminal offender);
- efforts of accomplices united in one crime;
- presence of a causal link between the actions of all accomplices together and of each of them individually and socially dangerous consequences;
- actions of accomplices are always intentional, they are characterized by the unity of intent.

Complicity does not take place when persons involved in committing a crime do not have properties of the subject of criminal responsibility (a juvenile, insane person).

Complicity can be:

1) simple (co-execution) if two or more principals are involved in a crime;

2) complicated, if persons with the distribution of roles were involved in committing a crime (apart from the principal there were the organizer, the abettor and the accessory):

- the **principal (or co-principal)** is the person who, in association with other criminal offenders, has committed a criminal offense under the Criminal Code, directly or through other persons, who cannot be criminally liable, in accordance with the law;
- the **organizer** is the person who has organized a criminal offense (or criminal offenses) or supervised its (their) preparation or commission. The organizer is also the person who has created an organized group or criminal

organization, or supervised it, or financed it, or organized the covering up of the criminal activity of the organized group or criminal organization;

- the **abettor** is the person who has induced any other accomplice to a criminal offense, by way of persuasion, subornation, threat, coercion or otherwise;
- the **accessory** is the person who has facilitated the commission of a criminal offense by other accomplices, by way of advice, or instructions, or by supplying the means or tools, or removing obstacles, and also a person who promised in advance to conceal the criminal offender, tools or means, traces of crime or criminally obtained things, to buy or sell such things, or otherwise facilitate the covering up of the criminal offense.

The criminal offense may be committed in complicity by:

- a *group of persons* where several (two or more) principal offenders participated in that criminal offense, acting without prior conspiracy;
- a *group of persons upon prior conspiracy* where it was jointly committed by several (two or more) persons who had conspired in advance, that is prior to the commencement of the offense, to commit it together;
- an *organized group* where several persons (three or more) participated in its preparation or commission, who had previously established a stable association for the purpose of committing this and other offense (or offenses), and had been consolidated by a common plan with assigned roles designed to achieve this plan known to all members of the group;
- a *criminal organization* where it was committed by a stable hierarchical association of several persons (three and more), whose members or structural units had organized themselves, upon prior conspiracy, to jointly act for the purpose of directly committing grave or special grave criminal offenses by the members of this organization, or supervising or coordinating criminal activity of other persons, or supporting the activity of this criminal organization and other criminal groups.

Complicity without collusion is rare and is only possible with a simple complicity. Complicity with prior conspiracy is most common, it is characterized by: greater cohesion of accomplices, sustainability and higher energy of actions of all accomplices.

An organized group is characterized by such features as:

- a developed and approved plan of criminal activity or committing a specific crime by the members of the group;

- the roles assigned between the accomplices;
- the group's covering its criminal activity on its own and with the help of others, including officers;
- the existence of common rules for behavior defined by the group;
- the existence of certain hierarchical connections between the members of the group;
- the presence of a certain material base (weapons, tools, transportation, facilities).

The creation of a criminal group (organized group) is a consummated crime.

A *criminal organization* is the most dangerous form of complicity. The Criminal Code defines it as:

- organized groups (Art. 185 – 191 of the Criminal Code);
- a group of smugglers (Art. 201 of the Criminal Code);
- criminal groups in correctional institutions (Art. 392 of the Criminal Code);
- terrorist groups (Art. 258 of the Criminal Code);
- a gang (Art. 257 of the Criminal Code);
- unlawful paramilitary or armed formations (Art. 260 of the Criminal Code).

Accomplices in a criminal offense will be punished only for crimes in which they personally participated. But the members of a criminal group (organization) will be punished even if they did not participate in a particular crime but participated in the criminal group (organization).

The *principal (or co-principals)* shall be criminally liable under the article of the special part of the Criminal Code which creates the offense he has committed, and the other accomplices shall be criminally liable under the respective paragraph of Art. 27 and the article (or paragraph of the article) of the special part of the Code which creates an offense committed by the principal.

The concealment of a criminal offender, tools or means of a criminal offense, traces of crime or criminally obtained things, or buying or selling such things shall not constitute complicity where they have not been promised in advance. Persons who have committed such acts shall be criminally liable only in cases prescribed by Art. 198 (acquisition or sale of property known to be proceeds from crime) and Art. 396 (concealment of a criminal offense) of the Criminal Code.

A promised failure to report a crime which is definitely known to be in preparation or in progress, prior to the consummation of such, shall not constitute complicity. Any such person shall be criminally liable only if the act so committed comprises the elements of any other criminal offense.

18.4. Punishment and its types

Punishment is a coercive measure imposed in a judgment of court on behalf of the State upon a person found guilty of a criminal offense and consisting in restraint of the sentenced person's rights and freedoms secured by law.

The *purpose* of punishment is:

- penalizing for the committed crime;
- re-education and reformation of the sentenced persons;
- prevention of commission of further crimes by the sentenced persons (individual prevention);
- prevention of commission of further criminal offenses by others (general prevention).

Punishment is not meant to cause physical sufferings or humiliate human dignity.

Criminal punishments are a system of measures of state influence on the perpetrator. This system is represented by:

1) **primary punishments**:

- community service;
- correctional labor;
- service restrictions for military servants;
- arrest;
- restraint of liberty;
- custody of military servants in a penal battalion;
- imprisonment for a determinate term;
- life imprisonment.

Only one primary punishment may be imposed for one criminal offense which may be accompanied by one or several additional punishments in cases and manner prescribed by this Code;

2) **additional punishments**:

- revocation of a military or special title, rank, grade or qualification class;
- forfeiture (confiscation) of property;

3) **mixed punishments** that can be applied as both primary and additional punishments:

- fine;
- deprivation of the right to occupy certain positions or engage in certain activities.

1. The **fine** is a pecuniary penalty imposed by court in the cases and within the limits provided for in the special part of the Criminal Code. The amount of a fine shall be determined by court depending on the gravity of the offense committed and the property status of the guilty person but within the limits of *thirty to fifty thousand tax-free minimum individual incomes*, unless a larger amount of a fine is prescribed by the articles of the special part of the Criminal Code. In view of the property status of the guilty person, the court may impose a fine with installments of payment by specific parts up to one year.

In some cases where the fine cannot be paid, court may replace the outstanding amount of the fine by community service or imprisonment.

2. A person, who has a military or special title, rank, grade or qualification class and was convicted of a grave or special grave offense, may be subject to **revocation of a military or special title, rank, grade or qualification class** by a judgment of court.

3. **Deprivation of the right to occupy certain positions or engage in certain activities** may be imposed as primary punishment for a term of two to five years or as additional punishment for a term of one to three years.

4. **Community service** consists in the performance, by a convicted person during hours free from work or studies, of unpaid work valuable to the community, as determined by the local government authorities. The term of the community service imposed may be from 60 to 240 hours and its duration in any single day may not be longer than 4 hours.

This kind of punishment may not be imposed upon persons who have been certified to have a first or second degree disability, pregnant women, persons of the retirement age, and military servants in active service.

5. The punishment of **correctional labor** shall be imposed for a term of six months to two years and is to be served by the convicted person at the place of his/her employment. A certain amount of money shall be deducted from the convicted person's salary in favor of the State, ranging from 10 to 20 percent as determined in the judgment of court.

This kind of punishment shall not be imposed upon pregnant women, women on maternity leave, disabled persons, persons under 16 years of age, persons of retirement age, military servants, individual soldiers and officers of the State Service for Special Communications and Information Protection of Ukraine, law enforcement officers, notaries, judges, prosecutors, defense attorneys, civil servants, and local government officials.

Court may substitute correctional labor by a fine calculated as three tax-free minimum incomes, established by the law, for one month of correctional labor, for those persons who became disabled after their sentence had been awarded by court.

6. The punishment of **service restrictions for military servants** shall be imposed on the convicted military servants, other than those in active service, for a term of *six months to two years* in cases provided for in this Code, and also if court, having regard to the circumstances of the case and the character of the person convicted, finds it possible to substitute the restriction of liberty or imprisonment for a term not exceeding two years by a service restriction for the same term.

A certain amount of money shall be deducted from the military pay of the person sentenced to a service restriction in favor of the State, ranging from 10 to 20 percent as determined in the judgment of court. While serving this sentence, the person sentenced may not be promoted in office or military rank, and the term of sentence is not to be included in the time-in-service for the purposes of regular promotion in military rank.

7. The punishment of **forfeiture** (confiscation) consists in forceful seizure of all, or a part of, property of the convicted person without compensation in favor of the State. Where a part of property is to be forfeited, court shall specify which part is to be forfeited or name the things to be forfeited.

Forfeiture of property shall be imposed for grave and special grave offenses, for crimes against national security of Ukraine and public safety of any graving, and shall only be applied in cases specifically provided for in the special part of the Criminal Code.

The list of property exempt from forfeiture shall be determined by the law of Ukraine.

8. The punishment of **arrest** consists in holding a convicted person in custody and shall be imposed for a term of one to six months. A military servant shall be put under arrest in a guardhouse.

Arrest shall not be imposed on persons under 16 years of age, pregnant women and women having children under 7 years of age.

9. The punishment of **restraint of liberty** consists in holding a person in an open penitentiary institution without isolation from the society but under supervision and with compulsory engagement of the convicted person in work. It shall be imposed for a term of *one to five years*.

Restraint of liberty shall not be imposed on minors, pregnant women and women having children under 14 years of age, persons of the retirement age, military servants in active service, and persons with the first or second degree disability.

10. The punishment of **custody in a penal battalion** shall be imposed on: 1) military servants in active service; 2) military servants undergoing military service under the contract; 3) officers undergoing personnel military service; 4) officers who are military service; 5) soldiers, called up for military service during mobilization for a special period (except for military women) for a term of *six months to two years* in cases provided for in the Criminal Code, and also where court, having regard to the circumstances of the crime and the character of the convicted person, finds it possible to substitute imprisonment for a term not exceeding two years by custody in a penal battalion for the same term.

Custody of military servants in a penal battalion shall not be applied to substitute imprisonment for the persons who previously served a sentence of imprisonment.

11. The **punishment of imprisonment** consists in the confinement of a convicted person and placing him or her in a penitentiary institution for a determinate period of time.

Imprisonment shall be imposed for a term of one to fifteen years, except for cases established by the general part of the Criminal Code.

12. The punishment of **life imprisonment** is imposed for special grave offenses and shall apply only in cases specifically provided for by this Code, where court does not find it possible to impose imprisonment for a determinate term. Life imprisonment shall not be imposed on persons who committed offenses under 18 years of age and to persons over 65 years of age, and women who were pregnant at the time of offense or at the time of sentencing.

18.5. Circumstances mitigating punishment

For the purposes of imposing a punishment, the following circumstances shall be deemed to be mitigating:

1) surrender, sincere repentance or active assistance in detecting the offense;

2) voluntary compensation of losses or repairing of damages;

3) providing medical or other assistance to the victim directly after the crime;

4) commission of an offense by a minor;

5) commission of an offense by a pregnant woman;

6) commission of an offense in consequence of a train of adverse personal, family or other circumstances;

7) commission of an offense under the influence of threats, coercion or financial, official or other dependence;

8) commission of an offense under the influence of strong excitement raised by improper or immoral actions of the victim;

9) commission of an offense in excess of necessary defense;

10) undertaking a special mission to prevent or uncover criminal activities of an organized group or criminal organization, where this has involved committing an offense in any such case as provided for by the Criminal Code.

When imposing a punishment, court may find other circumstances to be mitigating.

If any of the mitigating circumstances is specified in an article of the special part of the Criminal Code as an element of the offense that affects its treatment, court shall not take it into consideration again as a mitigating circumstance when imposing a punishment.

18.6. Circumstances aggravating punishment

According to Art. 67 of the Criminal Code for the purposes of imposing a punishment, the following circumstances shall be deemed to be aggravating:

1) repetition of an offense or recidivism;

2) commission of an offense by a group of persons upon prior conspiracy;

3) commission of an offense based on racial, national or religious enmity and hostility;

4) commission of an offense in connection with the discharge of official or public duty by the victim;

5) grave consequences caused by the offense;

6) commission of an offense against a minor, an elderly or helpless person;

7) commission of an offense against a woman who, to the knowledge of the culprit, was pregnant;

8) commission of an offense against a person who was in a financial, official or other dependence on the culprit;

9) commission of an offense through the use of a minor, a person of unsound mind or mentally defective person;

10) commission of an especially violent offense;

11) commission of an offense by taking advantage of a martial law or a state of emergency or other extraordinary events;

12) commission of an offense by a generally dangerous method;

13) commission of an offense by a person in a state of intoxication resulting from the use of alcohol, narcotic, or any other intoxicating substances.

Depending on the nature of the offense committed, court may find any of the circumstances specified in paragraph 1 of that Article, other than those defined in subparagraphs 2, 6, 7, 9, 10, and 12, not to be aggravating, and should provide the reasons for this decision in its judgment.

When imposing a punishment, court may not find any circumstances, other than those defined in paragraph 1 of Art. 67, to be aggravating.

Questions for self-assessment

1. What is crime and what types of crimes do you know?
2. What are the features and grounds of criminal responsibility?
3. What are the stages of the crime?
4. What mitigating or aggravating punishment circumstances do you know?

The practical task

When checking tourist Petrova's suitcase with a double bottom, customs officers found 30 000 dollars, 2 500 euros, a large number of fittings, 25 gold coins of tsarist minting and two old icons. All that had been acquired in the territory of Ukraine. Give legal assessment of the actions of Petrova. Is it legal to take such a sum of money and stuff abroad?

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Content

НАВЧАЛЬНЕ ВИДАННЯ

Сергієнко Валерій Вікторович
Пешкова Анжеліка Станіславівна

ПРАВО

Навчальний посібник
(англ. мовою)

Самостійне електронне текстове мережеве видання

Відповідальний за видання *В. В. Сергієнко*

Відповідальний редактор *М. М. Оленич*

Редактор *З. В. Зобова*

Коректор *З. В. Зобова*

Досліджено основні політичні інститути і функції держави. Розкрито роль права в регулюванні суспільних відносин. Наведено коротку характеристику основних галузей права, класифікацію джерел права та елементи системи законодавства України, викладено основи правового регулювання цивільних, сімейних, трудових правовідносин та способи їх захисту. До кожної теми наведено питання для самоконтролю та практичне завдання.

Рекомендовано для студентів галузі знань 0306 "Менеджмент і адміністрування", аспірантів і викладачів ВНЗ.

План 2016 р. Поз. № 4-ЕНП. Обсяг 198 с.

Видавець і виготовлювач – ХНЕУ ім. С. Кузнеця, 61166, м. Харків, просп. Науки, 9-А

Свідоцтво про внесення суб'єкта видавничої справи до Державного реєстру
ДК № 4853 від 20.02.2015 р.