NATIONAL UNIVERSITY

OF BIORESOURCES AND NATURE MANAGEMENT OF UKRAINE

Faculty of Law

Department of Civil and Commercial Law

METHODOLOGICAL RECOMMENDATIONS

for lectures and seminars

in the discipline "LEGAL REGULATION OF THE INDUSTRY"

for students of the Bachelor's degree

specialty 241 "Hotel and restaurant business"

KIEV – 2024

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Methodical recommendations for lectures and seminars on the discipline "Legal regulation of the industry" for students of the Bachelor's degree in specialty 241 "Hotel and restaurant business" / Compiled by: O.Y. Piddubnyi, O.P. Svitlychnyi, A.R. Trokhymenko, L.O. Pankova, Kyiv, 2024, 204 p. 8.93 printed pages.

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In accordance with the provisions of the Civil and Commercial Codes of Ukraine and other legislative acts, the methodological recommendations set out the main provisions of the course "Legal Regulation of the Industry". The text consists of lecture materials and seminar assignments, which are most often submitted for exams and tests in the course. The book is intended for students of the Educational and Research Institute of Continuing Education and Tourism of the Bachelor's degree in the specialty 241 "Hotel and Restaurant Business", scientists, entrepreneurs, as well as all those interested in the issues of legal regulation of economic and business activities.

The study guidelines are developed in accordance with the content and structure of the working curriculum and syllabus in the discipline "Legal Regulation of the Industry" and are recommended for use in the educational process.

CONTENTS

1. Description of the subject “Legal regulation of the industry”

Field of study, specialty, educational program, educational degree	
Educational degree	*Bachelor*
Specialty	*241 “Hotel and restaurant business”*
Educational program	*Hotel and restaurant business*
Characteristics of the discipline	
View	*Required*
Total number of hours	120
Number of ECTS credits	4
Number of content modules	3
Course project (work) if available	-
Form of control	Examination
Indicators of the discipline for full-time education	
	Full-time form obtaining higher education
Year of study (course)	3
Semester	5
Lecture classes	30 h
Practical seminar sessions	30 h
Laboratory classes	-
Independent work	60 h
Individual tasks	-
Number of weekly classroom hours for full-time students	4 h

2. Purpose, tasks, competencies and program results of the discipline "Legal regulation of the industry"

The purpose of the course is to obtain the necessary theoretical and practical knowledge in the field of legal support of the restaurant and tourism business and to master the acts of civil, labor, administrative legislation of Ukraine that regulate relations arising, changing and terminating in the restaurant and tourism business; to familiarize oneself with the grounds for the emergence, peculiarities of the exercise and protection, as well as the procedure for the termination of rights; to train high-level specialists for the provision of restaurant and tourism services.

Objectives:

- to familiarize students with the main categories of civil, labor and administrative law of Ukraine;
- to familiarize with the subject and objectives of the course "Legal regulation of the industry";
- to find out the basic principles of industry regulation;
- to highlight the main issues related to the legal support of the restaurant and tourism business;
- to develop skills in analyzing sources of law;
- to conduct a legal analysis of the main legal institutions that provide restaurant and tourism business;
- to teach students to use the acquired knowledge of law in practical professional activities or in doing business.

Acquisition of competencies:

Integral competence (IC):

The ability to solve complex specialized problems and practical problems of the hotel and restaurant business, which involves the application of theories and methods of the system of sciences that form the concepts of hospitality and is characterized by complexity and uncertainty of conditions.

General competencies (GC):

GC 04. Skills in the use of information and communication technologies

GC 08. Skills of safe activity.

Special (professional, subject) competencies (SC):

SC 06. Ability to design the technological process of production of products and services and the service process of implementation of basic and additional services in enterprises (institutions) of hotel, restaurant and recreational facilities

SC 13. Ability to plan, manage and control the activities of hotel and restaurant business entities.

Program learning outcomes (PLOs):

PLO 01. To know, understand and be able to apply in practice the main provisions of legislation, national and international standards governing the activities of hotel and restaurant business entities;

PLO 04. Analyze current trends in the development of the hospitality industry and recreation.

PLO 06. Analyze, interpret and model on the basis of existing scientific concepts the service, production and organizational processes of the hotel and restaurant business.

PLO 11. Apply modern information technology to organize the work of hotel and restaurant business.

PLO 12. To carry out effective quality control of products and services of hotel and restaurant business.

PLO 14. Organize work in hotel and restaurant establishments in accordance with the requirements of labor protection and fire safety.

PLO 20. To understand the requirements for the specialty due to the need to ensure sustainable development of Ukraine, its strengthening as a democratic, social, legal state.

PLO 23. To develop own projects of hotel and restaurant business enterprises and organize the technological process of service in rural green tourism accommodation, taking into account regional characteristics and national traditions.

3. Thematic plan for the discipline "Legal regulation of the industry" (program and structure of the discipline) for the full-time study

Names of content modules and topics	Number of hours						
	full-time form						
	weeks	of all	including				
			l	s	lab	ind	i.w.
1	2	3	4	5	6	7	8
Content module 1							
Topic 1: Regulatory and legal regulation of hotel and restaurant business enterprises	1-2	13	4	4			5
Topic 2. Regulation of labor relations in the hotel and restaurant business	3	9	2	2			5
Topic 3: Legal liability in the hotel and restaurant business	4	9	2	2			5
Topic 4. Types of administrative penalties for offenses in the field of hotel and restaurant business	5	8	2	2			4
Topic 5. Concept, objectives and system of criminal law of Ukraine	6	9	2	2			5
Total for content module 1	48		12	12			24
Content module 2							
Topic 6. Legal basis of activities in the field of hotel and restaurant business	7	8	2	2			4
Topic 7. Licensing of activities in the field of hotel and restaurant business	8	9	2	2			5
Topic 8: General characteristics of intellectual property rights in the field of hotel and restaurant business	9	9	2	2			5
Topic 9: Concept and types of civil law contracts in the field of hotel and restaurant business	10	9	2	2			5
Topic 10. Certification of hotel and restaurant business	11	8	2	2			4
Total for content module 2		43	10	10			23
Content module 3							
Topic 11: Peculiarities of notary's activity in the legal regulation of the industry	12	8	2	2			4
Topic 12: Rules for using hotels and similar accommodation facilities	13	8	2	2			4
Topic 13. Organizational and legal form of the created hotel enterprise	14-15	13	4	4			5
Total for content module 3	29		8	8			13
Total hours	120		30	30			60

4. Thematic plan of seminar classes in the discipline “Legal regulation of the industry”

№ n/a	Topic title	The number of hours
1	Topic 1: Regulatory and legal regulation of hotel and restaurant business enterprises	4
2	Topic 2. Regulation of labor relations in the hotel and restaurant business	2
3	Topic 3: Legal liability in the hotel and restaurant business	2
4	Topic 4. Types of administrative penalties for offenses in the field of hotel and restaurant business	2
5	Topic 5. Concept, objectives and system of criminal law of Ukraine	2
6	Topic 6. Legal basis of activities in the field of hotel and restaurant business	2
7	Topic 7. Licensing of activities in the field of hotel and restaurant business	2
8	Topic 8: General characteristics of intellectual property rights in the field of hotel and restaurant business	2
9	Topic 9: Concept and types of civil law contracts in the field of hotel and restaurant business	2
10	Topic 10. Certification of hotel and restaurant business	2
11	Topic 11: Peculiarities of notary's activity in the legal regulation of the industry	2
12	Topic 12: Rules for using hotels and similar accommodation facilities	2
13	Topic 13. Organizational and legal form of the created hotel enterprise	4
	Total hours	30

5. Thematic plan of independent work in the discipline "Legal regulation of the industry"

№ n/a	Topic title	The number of hours
1	Topic 1: Regulatory and legal regulation of hotel and restaurant business enterprises	4
2	Topic 2. Regulation of labor relations in the hotel and restaurant business	2
3	Topic 3: Legal liability in the hotel and restaurant business	2
4	Topic 4. Types of administrative penalties for offenses in the field of hotel and restaurant business	2
5	Topic 5. Concept, objectives and system of criminal law of Ukraine	2
6	Topic 6. Legal basis of activities in the field of hotel and restaurant business	2
7	Topic 7. Licensing of activities in the field of hotel and restaurant business	2
8	Topic 8: General characteristics of intellectual property rights in the field of hotel and restaurant business	2
9	Topic 9: Concept and types of civil law contracts in the field of hotel and restaurant business	2
10	Topic 10. Certification of hotel and restaurant business	2
11	Topic 11: Peculiarities of notary's activity in the legal regulation of the industry	2
12	Topic 12: Rules for using hotels and similar accommodation facilities	2
13	Topic 13. Organizational and legal form of the created hotel enterprise	4
	Total hours	60

6. Means of diagnosing learning outcomes:

- exam;
- module tests;
- abstracts;
- other types.

7. Teaching methods

- verbal method (lecture, discussion, interview, etc.)
- practical method (laboratory, practical classes);
- visual method (method of illustrations, method of demonstrations);
- work with educational and methodical literature (note-taking, thesis,
- annotation, reviewing, writing an abstract);
- video method (remote, multimedia, web-based, etc.);
- independent work (completion of tasks);
- individual research work of higher education applicants.
- other types.

8. Assessment methods

- exam;
- oral or written questioning;
- module testing;
- abstracts, essays;
- defense of practical works;
- presentations and speeches at scientific events
- other types.

9. Distribution of points received by higher education applicants. The assessment of knowledge of higher education applicants is based on a 100-point scale and is converted into national grades in accordance with Table 1 of the current "Regulations on Exams and Tests in NUBiP of Ukraine"

Rating of the applicant of higher education, points	**National assessment and compilation results**	
	Exams	Credits
90-100	Excellent	Enrolled
74-89	Good	
60-73	Satisfactory	
0-59	Unsatisfactory	Not credited

To determine the student's rating for mastering the discipline R_{DIS} **(up to** 100 points), the attestation rating (up to 30 points) is added to the student's rating for academic work R_{NR} (up to 70 points): $R_{DIS} = R_{NR+}$ **RAT .**

10. Methodological support

- electronic training course of the discipline (on the educational portal of NULES of Ukraine eLearn - https://elearn.nubip.edu.ua/course/view.php?id=2990.

- lecture notes and presentations (in electronic form on the educational portal of NULES of Ukraine eLearn - https://elearn.nubip.edu.ua/course/view.php?id=2990.

11. Lecture materials for the discipline “Legal regulation of the industry”

Topic 1: Regulatory and legal regulation of hotel, restaurant and tourism businesses

Content: the article studies the regulatory and legal regulation of activities of economic entities in the field of hotel, restaurant and tourism business (hospitality sector) as an important administrative lever of state regulation. As a result of the study, the author systematizes the legal acts which regulate the activities of economic entities in the hospitality sector by groups: Laws of Ukraine, Resolutions of the Cabinet of Ministers of Ukraine, National Standards of Ukraine, International Standards, and other regulatory legal acts, and a brief description of these acts is provided. The author systematizes external and internal factors of intensification of the hotel, restaurant and tourism business which require improvement of the regulatory framework.

As a result of the study, it is determined that the purpose of regulating the activities of hotel, restaurant and tourism enterprises is to harmonize the relations between service providers and their consumers, which is aimed at harmonizing the interests of producers, consumers and society and creating favorable conditions for the development of hotel, restaurant and tourism enterprises through the creation of regulations.

Keywords: regulatory and legal regulation, state regulation, hotel and restaurant and tourism business, hospitality industry, financial sustainability.

The problem of analyzing the regulatory and legal regulation of the activities of enterprises of the hotel, restaurant and tourism business is devoted to the works of domestic scientists, in particular N. Bakernyk, M. Boyko, L. Hopkalo, A. Kolesnichenko, M. Malska.

Certain aspects of the impact of regulatory and legal regulation on the activities of hotel and restaurant and tourism enterprises and their financial stability have been studied by domestic scholars L. Batchenko, A. Belyak, L. Honchar, and O. Kalchenko.

Identification of previously unresolved parts of the overall problem. The current legislation of Ukraine largely does not clearly define the hotel and restaurant business in the context of its belonging to the system of institutions in the tourism services sector. In view of this, in order to improve the efficiency of hotel and restaurant and tourism businesses and their financial stability, which is based on a number of factors, the key of which is, in particular, the rapid growth in demand for the national tourism product both in the domestic and international markets of service consumption, it is advisable to thoroughly systematize and generalize the current regulatory framework with due regard for international regulations. After all, despite the existence of a large number of different legal acts, there is no unified system of their interconnection and integrated action. Ensuring financing in the hotel, restaurant and tourism business.

The following methods of scientific research were used: *methods of synthesis and analysis* - to study the domestic experience of researching the regulatory and legal regulation of hospitality enterprises; *methods of grouping, systematization and generalization* - to classify the regulatory and legal regulation of hotel, restaurant and tourism enterprises; *economic and statistical method* - to identify the main trends in the development of enterprises in the hospitality sector (according to the State Statistics Service of Ukraine); *method of induction and deduction*

Summary of the main research material. To date, the intensification of processes in the hotel, restaurant and tourism business is influenced by numerous internal and external factors that exacerbate existing problems, hinder the development of the hospitality sector and require the use of effective specific tools adapted to modern management conditions.

That is why the justification of the need to improve the regulatory framework for the hotel, restaurant and tourism business should be based primarily on a factor analysis of the intensification of the development of enterprises in the hospitality industry (see presentation).

The state, as a guarantor, in particular, of economic security and financial stability, should be aware of the need to create a favorable climate for the development of hotel, restaurant and tourism businesses. In this case, the administrative levers of state regulation are an integral part of the system of hospitality technologies based on methodological and organizational principles, which forms an integral institutional mechanism for the functioning of hospitality enterprises.

Having analyzed the regulatory and legal framework for the activities of hotel, restaurant and tourism enterprises, we can group all regulatory and legislative documentation into several areas (see presentation).

Taking into account the presented classification of regulatory and legal support, further analysis of its problematic aspects for hotel, restaurant and tourism enterprises is focused on a certain gradation.

Among the laws of Ukraine that regulate the main aspects of the economic activity of hotel and restaurant and tourism enterprises are the Civil and Commercial Codes of Ukraine - codified regulations (laws) that govern the main relations of participants in the market of hotel and restaurant and tourism services. In addition, the Law of Ukraine “On Tourism”, the Law of Ukraine “On Standardization”, the Law of Ukraine “On Resorts”, the Law of Ukraine “On Technical Regulations and Conformity Assessment”, the Law of Ukraine “On Basic Principles and Requirements for Food Safety and Quality”, the Law of Ukraine “On Ensuring Sanitary and Epidemiological Welfare of the Population”, the Law of Ukraine “On Consumer Protection” define key aspects of the hotel, restaurant and tourism business (see slides).

The Ministry of Economic Development and Trade of Ukraine is the main body of the system of central executive authorities responsible for the formation and implementation of state policy in the hospitality sector. Accordingly, the Ministry of Economic Development and Trade establishes the relevant categories for tourism infrastructure facilities (hotels, other facilities intended to provide accommodation services, catering establishments, resort facilities, etc.), issues

certificates of establishment of tourism infrastructure facilities of the relevant category and maintains a register of certificates. As of December 9, 2019, according to the Register of Certificates of Establishment of Categories for Hotels and Other Objects Intended to Provide Temporary Accommodation Services, the Register includes 389 hotels that have been issued a certificate of establishment of a category. Among them: 5* - 51 hotels; 4* - 135 hotels; 3* - 144 hotels; 2* - 35 hotels; 1* - 24 hotels. The majority of five-star hotels are located in cities with more than one million inhabitants: Kyiv, Dnipro, Lviv, and Odesa. According to the State Statistics Service of Ukraine, as of 2019, there were 5451 collective accommodation facilities.

The Law of Ukraine "On Tourism" defines key terms, including "hotel", "hotel service", and "similar accommodation facilities".

According to the Law, in order to improve the level of tourist services, assist consumers in making a conscious choice of tourist services, ensure equal opportunities for tourism entities in the tourist services market, protect the rights and legitimate interests, life, health and property of citizens, and improve environmental safety, tourist infrastructure facilities are assigned quality and service levels. The Law defines the types of categories of tourist infrastructure facilities, the procedure for their establishment, change, and provision of information to consumers about the type and category of tourist infrastructure facility. The Law prohibits the provision of accommodation services without a certificate of the relevant category.

Among the resolutions of the Cabinet of Ministers of Ukraine regulating the activities of hotel, restaurant and tourism businesses, the basic ones are "On Approval of the Procedure for Establishing Categories for Hotels and Other Facilities Intended for Providing Temporary Accommodation Services", "On Approval of the Procedure for Providing Information to Consumers on the Type of Tourist Infrastructure Object" and "On the Procedure for Providing Temporary Accommodation Services" (see slides).

The procedure for assigning categories to hotels is set out in the CMU Resolution “On Approval of the Procedure for Assigning Categories to Hotels and Other Facilities Intended for Providing Temporary Accommodation Services”. The Procedure stipulates that the categories of hotels and other facilities intended to provide temporary accommodation services are established based on the results of voluntary certification of services with respect to safety for human life and health, protection of their property and environmental protection in accordance with an agreement between the certification body and the owner or his authorized person and assessment of compliance of hotels with the requirements of a certain category. Certification and assessment of the hotel is carried out by certification bodies.

Hotels are assigned the following categories: “five stars”, ‘four stars’, ‘three stars’, ‘two stars’ and ‘one star’. Other facilities intended for the provision of temporary accommodation services, including motels, boarding houses, rest homes, tourist centers, campsites, are assigned a category based on the level of service they provide (first, second, third, fourth and fifth levels).

The requirements for the operation of hotel, restaurant and tourism business establishments are set by the national standards of Ukraine - DSTU 4268:2003 “Tourism services. Accommodation facilities. General requirements”, DSTU 4269:2003 ”Tourist services. Classification of hotels”, DSTU 4281:2004 ‘Restaurant facilities’, DSTU 4527:2006 ”Tourist services. Accommodation facilities. Terms and definitions”. Works on hotel assessment, determination of their category are carried out in accordance with the requirements of DSTU 4269:2003 “Tourist services classification of hotels”. The standard defines the classification of hotels and similar accommodation facilities by category, as well as the requirements for them. The category of a hotel is indicated on its signboard, on receipts, in the guest's registration card and in advertising documents.

The requirements for each category of hotels defined by the standard are minimum requirements that must be met in full. Some international standards are harmonized in domestic regulatory analogues, for example, ISO/FDIS 18513:2003

Tourism services. Hotels and tourism accommodation. Terminology adapted in DSTU 4527:2006 “Tourism services. Accommodation facilities. Terms and definitions”. The State Standard of Ukraine 4268:2003 “Accommodation facilities” establishes the classification of accommodation facilities, general requirements for accommodation facilities and services provided in accommodation facilities. Based on international experience, small businesses are the backbone of the industry's development, structuring the service market in line with consumer demand, creating a competitive environment and creating additional jobs. Individual entrepreneurs, who mostly run small restaurants, hotels, and own private houses and apartments, create significant competition for enterprises, including large ones. They offer visitors a full range of basic and additional hotel services at a much lower cost. In addition to the state standards, the state construction norms DBN V.2.2-9:2018, DBN V.2.2-20:2008, and DBN V.2.2-25:2009 are mandatory, which apply to the design of new and reconstruction of existing buildings, structures and public facilities, including hotel and restaurant enterprises.

Other regulations are equally important, such as orders of the State Tourism Administration, the Ministry of Economy and European Integration of Ukraine, the Ministry of Agrarian Policy and Food of Ukraine, and sanitary rules (see presentation).

Licensing and certification procedures are the main administrative levers of state regulation, the use of which makes it possible to improve the operation of hotel, restaurant and tourism businesses. The introduction of licensing in the hospitality sector is aimed at protecting the rights and interests of service consumers, guaranteeing a certain level of service and protecting against its decline, compliance with sanitary, environmental and other norms and regulations, etc. Establishing parameters and defining clear criteria that will signal the mandatory acquisition of a license will create an effective licensing system.

The key objects of regulatory and legal regulation of hospitality enterprises are technologies for the production, organization and sale of hotel, restaurant and tourism services in various areas covering a wide range of issues (from the

terminology and time standards to the methodological basis for the formation of a hotel, restaurant or tourism product).

The State policy in the context of the development of hospitality enterprises as a component of the service sector is aimed at improving the quality criteria for its functioning. Identification of the problems of regulating the activities of enterprises and assessment of their significance in the socio-economic conditions of Ukraine may allow to assert that one of the most important ways to implement the State policy in the current conditions of development of business activities of hospitality enterprises is the State support of this industry.

Thus, it can be argued that the hospitality sector performs an institutional connecting mission in the system of economic and social relations. Therefore, in this context, the regulatory and legal support of the technological, organizational, technical and institutional basis of the service provision process is one of the main prerequisites for strengthening business and partnership relations and meeting the needs of the population in the service sector.

Results. An element of scientific novelty of the article was the deepening of research in the context of studying and analyzing the specifics of regulatory and legal regulation of hospitality enterprises. As a result of the study, the author substantiates the need to improve the regulatory and legal support of the hospitality sector as an important administrative lever of the State regulation.

The author proves that the course towards intensification of the hospitality sector as a source of budget revenues and a modern factor of improving Ukraine's business image in the international market necessitates that the State authorities constantly update and improve the regulatory framework which performs a connecting institutional function in the system of socio-economic relations. Accordingly, the key vector for further research in this regard should be a comprehensive systematization and generalization of the main provisions, spheres of influence and problem areas of the identified and existing legal documents in terms of their mutual coherence, exhaustiveness and compliance with international analogues.

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Topic 2. The concept of labor law and employment contract.

Lecture outline:

1. Concept, subjects and sources of labor law.

2. The concept, content and procedure for concluding an employment contract

3. Forms and terms of employment contracts. Probationary period during employment.

4. Types of transfers to another job. Transfer to another workplace.

5. Grounds and procedure for termination of the employment contract.

Labor law is a system of legal rules that governs the totality of labor relations between employees and employers and establishes rights and obligations in the field of labor at enterprises, institutions, and organizations regardless of ownership, as well as liability in case of their violation.

The subject matter of labor law is the basis, the basis on which there is a need to clarify the relationship between employees and employers regarding labor, and not all labor, but only that which is related to or arises from its social organization, creating a corresponding complex where labor relations are the main ones.

The methods of legal regulation of labor - an integral second component of labor law as an independent branch within the integral system of national law of Ukraine - include the contractual procedure for the emergence of labor relations, equality of the parties to an employment contract with their subordination to the rules of internal labor regulations in the course of work, a specific legal method of protection of labor rights of the parties to an employment contract by both the labor collective body (labor dispute commission) and the State body (court), participation of employees in the legal regulation of labor.

Labor law is divided into two groups. The first is the general part, which includes the following institutions: the concept and subject matter of labor law; basic principles of labor law; sources of labor law; subjects of labor law; labor relations; collective bargaining; legal organization of legal organization of employment.

The second group forms a special part of labor law, which includes: employment contract; working hours and rest periods; remuneration; labor discipline; material liability; labor protection; combining work and study; supervision and control over compliance with labor legislation; labor disputes.

The possibility to be a subject of labor law is conditioned by the presence of labor legal capacity and labor capacity.

In labor law, an employee has sole legal personality and full legal capacity upon reaching the age of 16, and in certain cases provided for by law - 15 and 14

years of age (with the consent of one of the parents or a person in loco parentis, persons who have reached the age of fifteen may, as an exception, be hired. In order to prepare young people for productive work, it is allowed to hire students of general education schools, vocational and specialized secondary schools to perform light work that is not harmful to health and does not disrupt the learning process, in their free time after reaching the age of fourteen with the consent of one of their parents or a person in loco parentis).

Employees are the main subject of labor law, and their legal status is generally the same for all employees, wherever they work. The only exceptions are three categories of employees: women, minors, and employees with reduced ability to work (disabled, pensioners, and labor veterans).

An important subject of labor law is the owner or his authorized body - employers of any form of ownership permitted by the current legislation of Ukraine. The labor collective as a subject of labor law has a real impact on state-owned and collective enterprises. Trade unions as subjects of labor law also play an important role in regulating labor relations.

Thus, the subjects of labor law include employees, employers, labor collectives and trade unions.

Sources of labor law are various normative acts of state authorities and management bodies that regulate labor relations.

Sources of labor law are classified according to various criteria. According to the nature of adoption, they are divided into:

- Acts adopted by state authorities
- Acts adopted by agreement between the employee and the owner or his authorized body.
- Acts adopted by international labor regulation bodies.

The sources of law are divided into:

- General: (Constitution of Ukraine, Labor Code, Laws of Ukraine, Resolutions of the Cabinet of Ministers, Presidential Decrees, etc.

- Local legal acts: collective bargaining agreements, internal labor regulations.

The main sources of labor law include the Constitution of Ukraine and the Labor Code of Ukraine (Labor Code of December 10, 1971).

Article 43 of the Constitution enshrines the principle of freedom of labor. “Everyone has the right to work, which includes the opportunity to earn his or her living by work that he or she freely chooses or accepts.” The same article prohibits forced labor. “The use of forced labor is prohibited. Military and alternative service shall not be considered forced labor.”

Anemployment agreement is an agreement between an employee and an employer under which the employee undertakes to perform the work specified in this agreement, subject to internal labor regulations, and the employer undertakes to pay the employee wages and provide the working conditions necessary for the performance of work as provided for by labor law, a collective bargaining agreement and an agreement between the parties.

An employee has the right to realize his or her abilities for productive and creative work by entering into an employment contract at one or several enterprises, institutions, or organizations simultaneously, unless otherwise provided by law, a collective bargaining agreement, or an agreement between the parties.

A special form of an employment agreement is a contract that specifies the term of the agreement, the rights, obligations and liabilities of the parties (including financial liability), the conditions of material support and organization of the employee's work, and the conditions for termination of the agreement, including early termination, may be established by agreement of the parties.

The scope of the contract is determined by the laws of Ukraine.

In accordance with the Constitution of Ukraine, any direct or indirect restriction of rights or establishment of direct or indirect advantages when concluding, amending or terminating an employment contract based on origin, social and property status, race and nationality, gender, language, political views,

religious beliefs, membership in a trade union or other association of citizens, type and nature of occupation, or place of residence is prohibited. Requirements for age, level of education, and health status of an employee may be established by the legislation of Ukraine.

The rules for concluding an employment contract require that an employee submit the following documents:

1) employment record book

2) passport or certificate of residence;

3) a document on education (diploma)

4) other documents required by applicable law. For example, an educational diploma is required when hiring a doctor, university professor, etc.

A medical examination certificate must be submitted by:

1) underage employees;

2) employees who are hired to work at enterprises with harmful, difficult or dangerous working conditions;

3) employees of the food industry, water supply companies, children's institutions, etc.

The conclusion of an employment contract is formalized by an order or instruction of the owner or his authorized body on hiring an employee.

An employment agreement is also considered to be concluded if no order or instruction has been issued, but the employee has actually been allowed to work.

THE PROCEDURE FOR CONCLUDING AN EMPLOYMENT CONTRACT

In order to make sure that you have actually been hired, you need to check whether the necessary procedures have been completed, which can be divided into the following stages:

1. The employee submits an application for employment, as well as documents required by labor law. This stage is entirely up to the employee

2. **Conclusion of an employment contract (reaching an agreement on the basic and additional terms of the employment contract).** It should be understood that an employment agreement may be concluded either orally or in writing, in any case, the owner must issue an order on hiring, which must set forth the essential terms of the agreement on which agreement has been reached.

3. ***Enrollment of an employee for work, which is formalized by an order or instruction of the employer.*** An order (instruction) is a document that formalizes the conclusion of an employment contract and is necessary for including an employee in the personnel lists of an enterprise, institution, organization, and for calculating his or her salary, etc. An order (instruction) on hiring an employee is not a written form of an employment agreement; it is a legal formalization of the agreement reached between the parties to enter into an employment agreement. On the basis of the order (instruction) on hiring an employee, an entry is made in the employee's employment record book. In addition, an employment agreement is considered to be concluded even if no order or instruction has been issued, but the employee has actually been admitted to work by a person who has the right to hire.

4. ***Acquaintance of the employee, against receipt, with the order (instruction) on hiring him/her, as well as making an entry in the employee's work record book about his/her hiring and familiarization against receipt in the personal card.***

Pay special attention to this procedure, because if it does not take place, there is no guarantee that you have been officially hired. Practice shows that sometimes employers, under various pretexts, do not familiarize employees with orders and entries in their employment record books and hire them much later than the date on which they actually started work. It is also necessary to check the content of the entry in the employment record book - whether the job (position) corresponds to the one agreed upon. Employees who start work for the first time should have their employment record book issued no later than five days after they are hired. The employment record book contains information about work,

incentives and awards for success in work at an enterprise, institution or organization; information about penalties is not included.

An employment agreement may be:

1) indefinite, concluded for an indefinite period;

2) for a specified period established by agreement of the parties;

3) concluded for the period of performance of certain work.

A fixed-term employment agreement is concluded in cases where the employment relationship cannot be renewed for an indefinite period, taking into account the nature of the subsequent work, or the conditions of its performance, or the interests of the employee, and in other cases provided for by law. An employment agreement is usually concluded in writing. **Compliance with the written form is mandatory:**

1) in case of organized recruitment of employees;

2) when concluding an employment contract for work in areas with special natural geographical and geological conditions and conditions of increased health risk

3) when concluding a contract;

4) in cases where the employee insists on concluding an employment agreement in writing;

5) when concluding an employment agreement with a minor (Article 187 of the Code);

6) when concluding an employment agreement with an individual;

7) in other cases provided for by the legislation of Ukraine.

A person invited to work as a result of a transfer from another enterprise, institution or organization by agreement between the heads of enterprises, institutions or organizations may not be refused to conclude an employment contract. It is prohibited to conclude an employment contract with a citizen who, according to a medical report, is contraindicated for health reasons. If an employment agreement is concluded between an employee and an individual, the individual must, within one week from the date of actual admission of the

employee to work, register the written employment agreement with the state employment service at his/her place of residence in accordance with the procedure established by the Ministry of Labor and Social Policy of Ukraine.

When concluding an employment agreement, it is prohibited to require from persons applying for employment information about their party and national affiliation, origin, residence and documents not required by law. When concluding an employment contract, a **probationary** period may be agreed upon by the parties to verify the employee's compliance with the work entrusted to him or her. The condition of probation must be stipulated in the order (instruction) on hiring.

During the probationary **period**, employees are subject to labor legislation.

Unless otherwise provided by the legislation of Ukraine, the probationaryperiod for hiring shall not exceed **three months** , and in certain cases, upon agreement with the relevant trade union committee, **six months**. The probationary period for hiring employees may not exceed one month.

When the probationary period has expired and the employee continues to work, he or she shall be deemed to have passed the probationary period, and subsequent termination of the employment agreement shall be permitted only on the general grounds. If during the probationary period it is established that the employee is unsuitable for the job for which he or she was hired, the owner or his or her authorized body may terminate the employment contract during this period. Termination of the employment agreement on these grounds may be appealed by the employee in accordance with the procedure established for consideration of labor disputes concerning dismissal.

The current labor legislation of Ukraine provides for cases when probation is not established when hiring an employee. Such employees include:

1) underage employees

2) young workers after graduation from vocational educational institutions

3) young specialists after graduation from higher education institutions

4) persons discharged from military or alternative (non-military) service;

5) disabled persons sent to work on the recommendation of a medical and social examination;

6) persons who change jobs in connection with moving to another area or transferring to another enterprise and in other cases provided for by law.

The owner or his/her authorized body has no right to demand from the employee to perform work not stipulated by the employment contract.

Transfer to another job at the same enterprise, institution, organization, as well as transfer to another enterprise, institution, organization or to another location, even if together with the enterprise, institution, organization, is allowed only with the consent of the employee, except as provided for in Article 33 of the Code and in other cases provided for by law.

Transferring an employee to another job at the same enterprise, institution, organization to another workplace, another structural unit in the same location, assigning work to another mechanism or unit within the specialty, qualification or position specified in the employment contract shall not be considered a transfer to another job and does not require the employee's consent. The owner or his/her authorized body has no right to transfer an employee to work that is contraindicated for health reasons.

In connection with changes in the organization of production and labor, it is allowed to change the essential working conditions while continuing to work in the same specialty, qualification or position. An employee must be notified of changes in essential working conditions, such as systems and amounts of remuneration, benefits, working hours, establishment or cancellation of part-time work, combination of professions, change of grades and titles of positions, and others, no later than two months in advance.

Temporary transfer of an employee to another job not stipulated by the employment contract is allowed only with his/her consent. The owner or his/her authorized body has the right to transfer an employee for up to one month to another job not stipulated by the employment contract without his/her consent, unless it is contraindicated for the employee's health condition, only to prevent or

eliminate the consequences of a natural disaster, epidemics, epizootics, industrial accidents, as well as other circumstances that endanger or may endanger the life or normal living conditions of people, with remuneration for the work performed, but not lower than the average earnings from the previous job.

In the cases specified in part two of this Article, it is prohibited to temporarily transfer pregnant women, women with a disabled child or a child under the age of six, as well as persons under the age of eighteen without their consent. Downtime is the suspension of work caused by the absence of organizational or technical conditions necessary for the performance of work, force majeure or other circumstances. In the event of downtime, employees may be transferred with their consent, taking into account their specialty and qualifications, to another job at the same enterprise, institution, or organization for the entire period of downtime or to another enterprise, institution, or organization, but in the same location for up to one month.

The grounds for termination of an employment agreement are (Article 36 of the Labor Code of Ukraine):

1) agreement of the parties;

2) expiration of the term, unless the employment relationship is actually continuing and neither party has demanded its termination;

3) conscription or enlistment of an employee for military service, or assignment to alternative (non-military) service;

4) termination of the employment agreement at the initiative of the employee, at the initiative of the owner or his/her authorized body or at the request of a trade union or other body authorized to represent the labor collective;

5) transfer of an employee, with his/her consent, to another enterprise, institution, organization or transfer to an elected position;

6) refusal of the employee to transfer to another location together with the enterprise, institution, organization, as well as refusal to continue work due to changes in essential working conditions;

7) the entry into force of a court verdict sentencing an employee (except in cases of release from serving a sentence of probation) to imprisonment or other punishment that excludes the possibility of continuing the work in question;

7-1) entry into force of a court decision according to which the employee was brought to justice for a corruption offense;

8) on the grounds provided for in the contract.

In what cases may an indefinite term employment contract be terminated at the employee's initiative?

An employee has the right to terminate an employment contract concluded for an indefinite period by giving two weeks' written notice to the owner or his/her authorized body. If the employee's resignation is due to the inability to continue work:

- moving to a new place of residence;
- transfer of a spouse to work in another location;
- enrollment in an educational institution;
- inability to reside in the area confirmed by a medical report;
- Pregnancy;
- caring for a child under the age of fourteen or a disabled child;
- caring for a sick family member in accordance with a medical certificate or a disabled person of the first group;
- retirement;
- hiring on a competitive basis,
- as well as for other valid reasons, the owner or his/her authorized body must terminate the employment agreement within the period requested by the employee.

If the employee has not resigned after the expiration of the notice period and does not demand termination of the employment contract, the owner or his authorized body may not dismiss him/her on the basis of the previously submitted application, unless another employee is invited to take his/her place and cannot be refused to enter into an employment contract in accordance with the law.

An employee has the right to terminate an employment agreement at will within a specified period of time if the owner or an authorized body fails to comply with labor laws, the terms of a collective bargaining agreement or an employment contract.

Only those employees who have entered into an employment agreement for an indefinite period of time have the right to terminate their employment contract with two weeks' notice. An employee's desire to resign on his or her own initiative indicates a voluntary expression of will, i.e., it must be conscious and not the result of an action on the part of the owner or his or her authorized body (e.g., in a state of extreme agitation caused by unreasonable demands of the owner or his or her authorized body (e.g., in a state of extreme agitation caused by unreasonable demands of the owner or his or her authorized body, etc.). If the employee filed a statement in connection with threats from the owner or an authorized body, the court must recognize such dismissal as illegal.

Any employee, regardless of the position he or she holds, may terminate an employment contract at his or her own initiative in accordance with the procedure. An employment agreement concluded for an indefinite period may be terminated at the employee's initiative only on the basis of his/her written request. No other evidence of the employee's desire to terminate the employment agreement on his/her own initiative shall be accepted.

The employee is not obliged to state the reasons that prompted him/her to submit a resignation letter.

However, specifying the reason is important if the employee has the right and desire to terminate the employment agreement within a period of less than two weeks. Thus, if the employee has a valid reason, the owner or his/her authorized body is obliged to terminate the employment agreement within the period requested by the employee (even the shortest period, for example, one day).

Valid reasons include: moving to a new place of residence; transfer of one of the spouses to another area; enrollment in an educational institution; inability to reside in the area; pregnancy; caring for a child under the age of fourteen or a

disabled child; caring for a sick family member or a disabled person of the first group; retirement; hiring by competition; and other reasons. The owner is also obliged to dismiss an employee at his or her own request within the period determined by the employee, if the owner or his or her authorized body does not comply with labor legislation or the terms of a collective or employment agreement on these issues.

The period for warning by an employee of the owner or his authorized body is calculated from the day following the submission of the application. If the last day of the notice period falls on a non-working day, the next working day is considered to be the day of the notice period expiration. The purpose of the notice is to enable the owner or his/her authorized body to find a replacement for the employee who is voluntarily dismissed. An employee who has notified the owner or his authorized body of the termination of the employment contract has the right to withdraw his or her notice before the expiration of the notice period, and the dismissal shall not be carried out, unless another employee is invited to take his or her place who cannot be refused an employment contract in accordance with the law (for example, by transfer).

If the employment contract has not been terminated after the expiration of the notice period and the employee does not insist on resigning, the employment contract is considered to be extended for an indefinite period. If an employee leaves work without notice before the expiration of the specified period, it is considered unauthorized absenteeism.

If the owner or his/her authorized body fails to comply with the labor legislation, the terms of the collective bargaining agreement and the employment contract, the employee may, at his/her discretion, set a termination period for the employment contract.

Termination of a fixed-term employment contract at the initiative of the employee.

A fixed-term employment contract (Article 23(2) and (3) of the Labor Code) may be terminated early at the request of the employee in the event of illness or

disability that prevents him or her from performing work under the contract, violation of labor legislation, a collective bargaining agreement or an employment contract by the owner or his or her authorized body, and in cases provided for in Article 38(1) of this Code.

If an employee enters into a fixed-term employment contract, he or she has additional obligations compared to an indefinite employment contract. Thus, he must either work for a certain period or perform certain work. And in order for a fixed-term employment contract to be of practical importance, the legislator has established that it can be terminated only in certain cases. These cases include:

- illness or disability of the employee that prevents him/her from continuing to work under the employment contract;

- violation of labor laws, collective bargaining agreements or employment contracts by the owner or his authorized body

- other valid reasons provided for in Part 1 of Article 38 of the Labor Code.

When a fixed-term employment contract is terminated, the law does not establish a notice period for the owner or an authorized body to notify the employee of the impending dismissal. The employment relationship must be terminated within the period requested by the employee. However, an employee has no right to terminate employment without the appropriate permission of the head of the enterprise, institution or organization, as this is considered a violation of labor discipline.

The refusal of the owner or his/her authorized body to satisfy the employee's request to terminate the employment contract for the reasons provided for in this Article may be appealed to the labor dispute commission or directly to the court. If the employee's claims are satisfied, the employment agreement shall be deemed terminated from the moment the decision comes into force or the period specified in the decision, and from that time the employee shall be paid in full.

Termination of a fixed-term employment contract at the initiative of the owner.

Termination of an employment agreement at the initiative of the owner or his/her authorized body. An employment contract concluded for an indefinite period, as well as a fixed-term employment contract before its expiration, may be terminated by the owner or his/her authorized body only in the following cases:

- Changes in the organization of production and labor, including liquidation, reorganization (bankruptcy) or re-profiling of an enterprise, institution, organization, reduction in the number or staff of employees;

- the employee's incompatibility with the position or work performed due to insufficient qualifications or health conditions that prevent the continuation of this work;

- systematic failure by an employee to fulfill the duties assigned to him/her by the employment contract or internal labor regulations without valid reasons, if the employee has previously been subject to disciplinary or social sanctions;

- absenteeism (including absence from work for more than three hours during a working day) without valid reasons;

- absence from work for more than four consecutive months due to temporary disability, excluding maternity leave, unless the law provides for a longer period of retention of the job (position) in case of a certain disease. For employees who have lost their ability to work;

- in connection with an occupational injury or occupational disease, the place of work (position) is retained until the employee regains the ability to work or the disability is established;

- reinstatement of an employee who previously performed this work;

- Appearance at work in a state of drunkenness, in a state of narcotic or toxic intoxication;

- committing theft (including petty theft) of the owner's property at the place of work, as established by a court verdict that has entered into force or a resolution of a body competent to impose an administrative penalty or take social action.

Dismissal on the grounds specified in clauses 1, 2 and 6 is allowed if it is impossible to transfer the employee, with his/her consent, to another job.

It is not allowed to dismiss an employee at the initiative of the owner or his authorized body during the period of his temporary disability (except for dismissal under clause 5), as well as during the period of the employee's vacation. This rule does not apply to the case of complete liquidation of an enterprise, institution or organization. Unlike an employee, the owner may terminate an employment contract for an indefinite period only if there are grounds specified in the law. Additional grounds that provide for the owner's right to dismiss an employee may be established only by contract.

Recently, dismissal of employees in connection with changes in the organization of production and labor, including liquidation, reorganization (bankruptcy) or re-profiling of an enterprise, institution, organization, or reduction in the number of employees, has been very common in Ukraine. In all these cases, an employment agreement may be terminated on the basis of clause 1 of Article 40 of the Labor Code only in case of reduction in the number or staff, i.e., quantitative changes in the composition of employees by positions, specialties, qualifications, professions. Pursuant to paragraph 19 of the Resolution of the Plenum of the Supreme Court of Ukraine “On the Practice of Consideration of Labor Disputes by the Courts”, the owner or his authorized body has the right to rearrange employees within homogeneous professions and transfer more qualified employees whose positions have been reduced to other positions with their consent, dismissing less qualified employees. If this right has not been exercised, the court should not discuss the expediency of such a rearrangement.

One of the types of changes in the organization of production and labor is the liquidation of an enterprise (Article 40(1) of the Labor Code).

Liquidation is the termination of a legal entity as a legal entity without legal succession. Reorganization is the emergence of one or more new legal entities as legal entities on the basis of a valid legal entity. In case of reorganization of a legal entity, all its rights and obligations are transferred to the legal successor. The legislation defines the following 5 ways of reorganization: merger, accession, division, spin-off and transformation.

Although clause 1 of Article 40 of the Labor Code implies that reorganization and re-profiling give the owner grounds to terminate the employment contract, this is not the case. In the event of reorganization and re-profiling, the validity of the agreements of employees are extended. This follows from Part I of Article 36 of the Labor Code. The Plenum of the Supreme Court of Ukraine clarified that even in the case of re-profiling of enterprises, institutions, and organizations, termination of an employment contract with employees is allowed only in case of reduction of staff or number of employees. In other words, the grounds for termination of an employment agreement are not the reorganization or re-profiling itself, but the subsequent reduction in the number of employees or staff.

Pursuant to Article 14(1) of the Law "On Enterprises in Ukraine", the owner or his authorized body has the right to determine the staff and number of employees. And if the court considers a dispute over the reinstatement of an employee, it is obliged to check whether there are grounds for dismissal (whether there was a reduction in the staff or number of employees). However, it cannot raise the question of the expediency of reducing the number of employees, as the owner, using the right of independent economic initiative, has the right to make such decisions at its discretion.

Termination of an employment agreement at the initiative of the owner or his/her authorized body is also possible if the employee is found to be unsuitable for the position or work performed due to insufficient qualifications or health conditions that prevent the employee from continuing the work. An inability to perform the work properly due to insufficient qualifications or health condition is considered to be an incompatibility with the work performed. It should be noted that the grounds for termination of an employment agreement are precisely the identified inconsistency. If the owner or his authorized body, when hiring an employee, knew that he did not have a document on education or work experience required by the qualification characteristics, then, as a general rule, he cannot dismiss the employee on these grounds, since they were not discovered in the

course of work, the owner knew about them initially. The identified discrepancy should be understood as poor performance of work, improper performance of labor duties due to insufficient qualifications.

To perform certain types of work, the law requires a document on education and qualification, on passing a knowledge test, on admission to work, etc. (for example, a lawyer, driver, doctor). In such cases, an employee's lack of an educational document serves as grounds for dismissal on the grounds of incompatibility with the position.

Inadequate qualifications may be grounds for dismissal of an employee only if the owner or his authorized body has actual evidence that the employee is unable to properly perform his/her duties due to the lack of qualifications. duties, and if the employee cannot be transferred to another job with his or her consent.

Periodic appraisals are an effective way to verify that employees are suitable for their positions or jobs. Based on the decision of the appraisal committee, the head of the company has the right to transfer an employee who is found to be incompatible with the position to another job with his or her consent. If the transfer is not possible, the manager may terminate the employment contract with the employee within two months from the date of the appraisal under clause 2 of Article 40 of the Labor Code.

Pursuant to clause 21 of the Resolution of the Plenum of the Supreme Court of Ukraine “On the Practice of Consideration of Labor Disputes by the Courts”, the conclusions of the appraisal committee are advisory in nature and are subject to evaluation in conjunction with other evidence in the case. Termination of an employment agreement due to unsatisfactory health condition is usually allowed only in case of permanent disability. A partial loss of ability to work cannot in itself be a ground for dismissal for incompatibility with the position or work performed, if the employee performs his or her job duties properly and the work is not contraindicated for health reasons.

The conclusion of the owner or his/her authorized body about the incompatibility of the work performed must be based on such objective data as the

conclusion of the medical advisory commission (MAC) or medical and social expert commission (MSEC).

Dismissal for health reasons is allowed only if the owner or his authorized body cannot provide such an employee with lighter work (Article 40(2) and Article 170 of the Labor Code). Paragraph 3 of Article 40 of the Labor Code allows the owner to terminate the employment contract in case of systematic failure of the employee to fulfill the duties imposed on him/her by the employment contract or internal labor regulations without valid reasons, if the employee has previously been subject to disciplinary or social sanctions.

Such dismissal is subject to certain conditions:

1) the employee fails to perform or improperly performs his/her labor duties arising from the employment contract or internal labor regulations;

2) the failure to perform or improperly perform labor duties was committed without valid reasons (intentional or negligent);

3) the failure to perform or improper performance must be systematic. Employees who have been subject to disciplinary or social penalties for violating labor discipline and violate it again within a year from the date of the penalty for the first violation are recognized as systematically violating labor discipline. Disciplinary and social penalties are repaid if the employee does not violate discipline again within a year after they were imposed (Article 151 of the Labor Code);

4) disciplinary sanctions may be imposed only within one month from the date of discovery of the offense. Art. 147 of the Labor Code of Ukraine provides for only one disciplinary sanction - a reprimand - which is relevant for dismissal under clause H of Art. 40 of the Labor Code of Ukraine. However, legislation, statutes and regulations on discipline may provide for other disciplinary sanctions for certain categories of employees. Disciplinary penalties are applied by the body authorized to hire (elect, approve and appoint) the employee in question. Disciplinary sanctions may also be imposed on employees who are disciplined under charters, regulations and other acts of legislation on discipline by higher

authorities. Employees holding elected positions may be dismissed only by a decision of the body that elected them. Prior to imposing a disciplinary sanction, the owner or an authorized body must request written explanations from the violator of labor discipline. Only one disciplinary sanction may be imposed for each violation of labor discipline. When choosing the type of penalty, the owner or his/her authorized body must take into account the severity of the offense and the damage caused by it, the circumstances under which the offense was committed, and the employee's previous work. The penalty is announced in an order (instruction) and communicated to the employee against a receipt within three days. Termination of an employment contract under clause 1 of Article 40 of the Labor Code of Ukraine requires the prior consent of the trade union body.

Dismissal for unauthorized absenteeism is provided for in Article 40(4) of the Labor Code. Absenteeism is defined as an employee's absence from work without valid reasons for the entire day, as well as for more than three consecutive hours or in total during a working day. When it comes to absenteeism, it means the employee's absence from work, not at the workplace. If an employee is on the company's premises but is absent from work, this is not absenteeism, but a violation of labor discipline rules. The legislation does not establish any general list of valid reasons for absence from work, so this issue is decided directly by the owner or his authorized body in each individual case, based on specific situations.

It is clear that these must be significant circumstances that prevent attendance at work and cannot be eliminated by the employee. There is no doubt that a natural disaster, an employee's illness, caring for a sick family member, irregular transportation (accidents, delays, etc.), fulfillment of civic duty, and so on are all valid reasons. Each of them must be supported by relevant documents (certificates) or witness statements.

Refusal to perform work to which the employee was transferred by the owner or an authorized body in violation of labor law shall not be considered absenteeism. It is not allowed to dismiss an employee after one month from the

date of detection of absenteeism and later than six months from the date of its commission.

If an employee has already been penalized for absenteeism, he or she may not be dismissed for such absenteeism. Dismissal for absenteeism requires the prior consent of the trade union body (Article 43 of the Labor Code of Ukraine), and for elected employees, the decision of the body that elected them.

Absence from work for more than four consecutive months due to temporary disability, excluding maternity leave, is also grounds for termination of the employment contract (Article 40(5) of the Labor Code). Only continuous disability lasting for four consecutive months is grounds for termination of an employment agreement. It is not allowed to summarize separate periods of sickness alternating with return to work. An employee may not be dismissed if he or she has already recovered and resumed his or her duties, although the temporary disability lasted more than four months before that. Employees with tuberculosis retain their jobs for 12 months, and employees who have suffered an occupational injury or occupational disease retain their jobs for the duration of their recovery or disability.

Dismissal under clause 5 of Article 40 requires the mandatory prior consent of the trade union body. As with other grounds, dismissal under this clause is only a right of the owner or his authorized body, not an obligation. Therefore, if the employee's sickness absence does not disrupt the normal course of production, the practice is that it is not possible to dismiss him or her due to absence for more than four consecutive months.

Paragraph b of Article 40 of the Labor Code provides for the dismissal of an employee in the event of reinstatement in accordance with the procedure prescribed by law of an employee who previously performed the same job. Termination of an employment agreement on this basis may occur: in the event of reinstatement of a previously dismissed employee to his or her former job by a court decision, a labor dispute commission or the owner himself or herself; in the event of the return to work of a person called up for military service and

discharged to the reserve no later than three months after the date of call-up, not counting the time required to travel to the place of residence - the return of rehabilitated persons.

A citizen dismissed from work due to an unlawful conviction must be reinstated to his or her previous job on the basis of Article 6 of the Law “On the Procedure for Compensation for Damage Caused to a Citizen by Unlawful Actions of the Inquiries, Preliminary Investigation, Prosecutor's Office and Court”.

The Supreme Court of Ukraine considers it impossible to reinstate an employee not only in the event of liquidation of an enterprise, institution, or reduction of a position, but also if there are other reasons that prevent the employee from being reinstated, such as the position being held by an employee who cannot be dismissed. In this case, the court dismisses the claim for reinstatement, and the employment is carried out by the state employment service. If such a citizen applies to the state employment service no later than three months after the acquittal or the decision (determination) to terminate the criminal case due to the absence of a crime, the absence of corpus delicti in the act or failure to prove the accused's participation in the commission of a crime, he or she is provided with a suitable job within one month.

Clause 6 of Article 40 of the Labor Code does not apply when it comes to returning a previously dismissed employee to his or her place of work. He or she is provided with the same or equivalent work, but not the same workplace. Dismissal on this ground is allowed if the employee cannot be transferred to another job with his/her consent.

Paragraph 7 of Article 40 of the Labor Code provides for such grounds for dismissal as an employee's appearance at work in a state of intoxication, under the influence of drugs or toxic substances. An employee's appearance at work under the influence of alcohol, drugs or toxic substances is grounds for dismissal regardless of when it occurred - at the beginning, middle or end of the working day. Such an employee's condition may be confirmed by a medical report or other types of evidence admissible under civil procedure law. These can be acts in any

form, which emphasize the external signs of intoxication (pungent smell of alcohol, incoherent, slurred speech, etc.). It is advisable that several witnesses sign such an act. This may be the employee's own written admission.

The ground for dismissal of an employee is the appearance of an employee in a state of drunkenness, in a state of narcotic or toxic intoxication at the workplace during working hours. Appearance in a state of intoxication at the workplace during free time, on a day off, during vacation, etc. cannot be grounds for dismissal. However, for employees who are disciplined under disciplinary statutes (communications, railway transport, etc.), it is also considered a violation of labor discipline if they appear to be drunk, intoxicated or under the influence of drugs or toxic substances not only at their workplace, but also on the territory of the enterprise and outside of working hours.

It should also be borne in mind that for employees whose working day is not standardized, the time spent at work in excess of the established total duration is working time.

Clause 8 of Article 40 of the Labor Code applies in case of theft of the owner's property at the place of work.

Dismissal under this clause is possible if two conditions are met simultaneously:

1) the theft was committed at the employee's place of work;

2) the theft is established by a court verdict that has entered into force or by a resolution of a body competent to impose an administrative penalty or take measures of public punishment.

An employee may be dismissed due to a court verdict that has entered into force only if the employee has been sentenced to a punishment that does not make it impossible to continue the work in question.

If the employee is sentenced to a punishment that makes it impossible to continue the work in question, the employment contract is terminated under clause 7 of Article 36 of the Labor Code of Ukraine.

Dismissal in connection with theft at the place of work shall be made no later than one month from the date of entry into force of the verdict, resolution or decision of the competent authority, not counting the time spent on vacation and dismissal from work due to temporary disability. The prior consent of the trade union body is not required to terminate an employment contract under clause 8 of Article 40 of the Labor Code.

Part two of Article 40 of the Labor Code allows for dismissal on the grounds provided for in paragraphs 1, 2 and 6 of Article 41 of the Labor Code only if the employee cannot be transferred to another job with his or her consent. First and foremost, the owner or his authorized body must offer the employee a job that is suitable for his or her type of activity, and only if it is not available can another job be offered. If the court finds that the owner or his authorized body had the opportunity to transfer the employee and the employee did not object, the dismissed employee shall be reinstated.

Pursuant to part three of Article 40 of the Labor Code, an employee may not be dismissed at the initiative of the owner or his authorized body during the period of his temporary disability. However, if such temporary disability lasts more than 4 months, the above rule does not apply. Also, an employee cannot be dismissed while on vacation. Vacation here means all types of leave (annual, sabbatical, etc.).

In the event of complete liquidation of an enterprise or organization, an employee may be dismissed both during the period of temporary disability and during the period of vacation.

Topic 3: Legal responsibility

PLAN.

1. **Legal liability: concept and features**
2. **Types of legal liability and their characteristics**
3. **Grounds for bringing and exemption from legal liability**

Question 1. Legal liability is an important means of ensuring the protective function of law. The latter is a qualitative indicator of the actual realization of individual rights and freedoms in social reality. This is due to the fact that in the process of realization of legal liability, the State directly influences the sphere of statutory subjective rights and legal obligations. This reveals the value orientations of the State, the level of civilization of society, the degree of spirituality and culture of the population, as well as the availability of legislative guarantees and mechanisms for the protection of individual rights and freedoms.

The issue of legal liability is one of the key areas of national jurisprudence. However, despite a long period of comprehensive study of legal liability, a significant number of aspects of its legal nature remain controversial.

Consideration of legal liability is impossible without analyzing its generic concept - social liability, which contains the basic “genetic code” of any type of liability. Social responsibility arises simultaneously with society, from the moment when a person's behavior becomes socially significant and begins to be regulated by social norms, its formation is closely related to the development of a person and social relations.

ocial responsibility is an inseparable unity of positive and negative aspects and has two **forms of implementation**, i.e. ways of external manifestation: positive (voluntary) - expressed in the reaction to fulfillment of the requirements of social norms, in its socially useful behavior, and to it, and negative (compulsory) - expressed in the reaction to violation of social norms and application of certain measures of public and/or state coercion.

Social responsibility is a reaction to the fulfillment or violation of social norms.

Based on the existing types of social norms that a person observes or violates, the following main **types of social responsibility** are distinguished : moral, political, religious, corporate, legal, etc. In society, different types of social responsibility exist in unity and interaction. The emergence of legal liability was historically caused, first of all, by the fact that the system of social responsibility of

primitive society was not adapted to the realities of a socially heterogeneous society.

Legal liability, like any other type of social responsibility, is unified and includes positive (prospective, voluntary) and liability for unlawful behavior (negative, retrospective).

Various approaches to positive legal liability have been formed in domestic jurisprudence: positive liability is a sense of responsibility; positive legal liability is an obligation to comply with the law; positive legal liability is lawful behavior; incentive positive legal liability, etc.

In addition, there are basic approaches to negative legal liability: legal liability - punishment; legal liability - implementation of sanctions; legal liability - a measure of state coercion; legal liability - the reaction of society to an offense; legal liability - the obligation to endure restrictions; legal liability - assessment (condemnation); legal liability for an offense - legal irresponsibility of legal entities, etc.

It should be noted that scholars who recognize and study the positive and negative aspects of legal liability emphasize the unity of the latter. However, the separation of aspects and types of liability (positive and negative) inevitably leads to the division and dismemberment of this phenomenon.

Based on the foregoing, there is every reason to assert that **legal liability** is a normative, guaranteed and ensured by state persuasion or coercion measure of the state's response to the observance and implementation of the rules of law, in the lawful behavior of legal entities, which is approved or encouraged by the state, and in case of violation of the rules of law - the offender's obligation to suffer censure, restriction of personal, material and organizational rights.

Features of legal liability:

- based on the rules of law, formally defined, clear, detailed and generally binding;

- Guaranteed by the state, directly related to the state power activity and state legal will;

- is ensured by state persuasion or coercion;

- its consequences are state approval, encouragement or condemnation and punishment;

- is carried out in a certain procedural order.

The above features of legal responsibility allow us to distinguish it from other types of social responsibility. The content of these features combines the properties characterizing both voluntary and state-compulsory forms of legal liability.

2. Types of legal liability and their characteristics

The study of legal liability is impossible without a thorough analysis of its types. The classification of legal liability makes it possible to study the latter as a complex, systemic and multifunctional institution, to find out the place of legal liability in the system of social responsibility, to characterize the specific features of certain types and to substantiate the criteria for dividing liability in the field of law into types.

The most optimal and essential basis for a detailed classification of the system of legal liability into types is the peculiarities of the subject matter and method of legal regulation of social relations, i.e., **the branch criterion**. Based on this criterion, legal liability is divided into the following main types: constitutional, criminal, administrative, civil, and labor (disciplinary and material) liability.

Constitutional liability exists in such crucial areas of public life as the rights, freedoms and duties of a person and a citizen; democracy and sovereignty; organization and functioning of state power, justice, prosecution, etc. In the legal literature, ***constitutional liability*** is understood as an independent type of legal liability that implies proper and conscientious performance of duties by constitutional law subjects (positive aspect) or negative consequences or undesirable changes in the constitutional and legal status for these subjects for violation of the norms of the current constitutional law (negative aspect).

The subjects of constitutional responsibility are the relevant range of state bodies, their officials, and local self-government bodies.

Examples of negative constitutional responsibility include:

1) dismissal of the president by impeachment;

2) a vote of no confidence in the government by the parliament in the form of a resolution, which results in the resignation of the government

3) the Constitutional Court of Ukraine recognizing unconstitutional legal acts as unconstitutional;

4) early termination of powers of state bodies (e.g., parliament), officials, and judges (e.g., for breach of oath).

Criminal liability exists in the following areas of social relations: national security; human and civil rights and freedoms; economy, property, economic activity; public order; environment; morality; security of humanity and international legal order, etc. Criminal liability, along with other types of legal liability, performs regulatory, preventive, punitive, restorative and educational functions. The regulatory function of criminal liability affects both the behavior of the subjects of criminal liability and the activities of the law enforcement agency. On the one hand, it enshrines the obligation of citizens to comply with criminal law, the right and obligation of the state to promote and ensure criminal lawful behavior, and on the other hand, in case a subject commits a crime, the right and obligation of the state to apply criminal law enforcement measures to him/her.

Features of the state-compulsory form of criminal liability:

1) occurs for the commission of crimes, an exhaustive list of which is contained in the Criminal Code of Ukraine, i.e., it is established only by law;

2) occurs from the moment the court verdict enters into force;

3) it is implemented exclusively in court;

4) it is based exclusively on committed crimes;

5) entails the application of sanctions to the guilty person, the list of which is also limited by law - from basic to additional punishments.

Administrative liability exists in such areas of public life as human and civil rights and freedoms; labor protection and public health; property; agriculture; transportation; public order and public safety; management procedures, etc.

Civil liability affects the determination of the civil legal status of individuals and legal entities, the consolidation and formalization of the dynamics of property and personal non-property relations, contractual and non-contractual obligations. Civil liability is used primarily to reconcile various property interests in society and ensures the performance of desirable actions and limits the possibility of undesirable ones.

Features of negative civil liability:

1) it occurs for causing damage to any person (individual, legal entity or state) and any person recognized by civil law as a subject of civil legal relations;

2) issues of bringing to civil liability and decisions on them are vested in courts (general, commercial, arbitration) or administrative state bodies;

3) the obligation to prove the absence of fault, i.e. the very basis for liability, is imposed by law on the offender;

4) unlike other types of liability, civil liability is sometimes possible in the absence of fault, for example, for causing losses and moral damage regardless of fault by a source of increased danger, as provided for in Article 1167 of the Civil Code of Ukraine.

Labor liability exists in such areas of social relations as labor discipline, safety, and fair treatment of property. Liability in labor law is divided into disciplinary and material liability. They differ in legal content, legal consequences, and the procedure for applying rewards and penalties; but in both cases, the subject of liability is the employee. **Negative disciplinary liability** is the imposition of disciplinary sanctions in the form of personal or organizational restrictions on the guilty employee in accordance with the procedure and under the conditions provided for by labor legislation. There is general and special disciplinary liability. General disciplinary liability is provided for by the Labor Code of Ukraine and internal labor regulations, and applies to all employees without exception (Article

147 of the Labor Code of Ukraine). Special disciplinary liability determines the peculiarities of the legal status of certain groups of employees and is exercised: in the order of subordination; in accordance with the discipline statutes; on the basis of separate regulatory legal acts. The legal literature distinguishes between such type of liability as **material liability** of employees (Articles 130 - 138 of the Labor Code of Ukraine), which is interpreted as a type of negative legal liability of an employee for material damage caused to an enterprise, institution, organization as a result of violation of his/her employment duties (Article 130 of the Labor Code of Ukraine). At the same time, liability may be full or limited.

1. Grounds for bringing and exemption from legal liability

When considering the nature of legal liability, it is necessary to analyze its grounds. In the encyclopedic literature, a legal basis is understood to be a set of circumstances, conditions, facts and prerequisites provided for by law that ensure the occurrence of legal consequences. It is well known in legal theory and law enforcement practice that legal liability is possible only if there are grounds for its occurrence and if there are no grounds that exclude it.

Grounds for legal liability are a set of circumstances that make legal liability possible and appropriate.

In law, a distinction is made between the grounds for bringing to legal liability and the grounds for legal liability.

Thus, a lawmaker, when establishing a rule of law, models possible prohibited and permitted behavior of legal entities. The rule of law establishes the extent to which the subject is limited by the requirements imposed on him/her and the possible assessment of his/her behavior: condemnation, application of coercive measures, approval or encouragement. In view of this, **the formal basis for** positive legal liability is a legally enforceable rule of law. The latter contains a rule that regulates the behavior of legal entities, indicates negative consequences in case of its violation, or, conversely, contains a measure of encouragement, thereby stimulating the social activity of the entities.

By indicating the degree of encouragement or the possibility of negative consequences in the event of unlawful acts, the rule of law as a model of lawful acts influences the formation of positive attitudes among legal entities, which are embodied in their lawful behavior. A rule of law enshrines values and ideas that should become part of a person's consciousness and life orientation. At the same time, a person is not a passive object of the educational effect of legal norms. Based on the needs, interests and values of the individual, the subject selectively treats the rules of law, positively perceiving some, rejecting others, and being indifferent to others. The type of lawful behavior depends to a large extent on the content of a person's motives: socially active, law-abiding, conformist, marginal, habitual.

In turn, the grounds for negative legal liability are a set of circumstances that make legal liability possible. The actual basis for bringing to negative legal liability is the corpus delicti of the offense (for example, part 1 of Article 2 of the Criminal Code of Ukraine states that the basis for criminal liability is the commission by a person of a socially dangerous act that contains the corpus delicti of a crime under this Code).

The grounds for negative legal liability are a set of circumstances that make legal liability proper. Such grounds are

a) the fact of committing an offense (factual basis);

b) the existence of a legal provision prohibiting such behavior and establishing appropriate sanctions (formal or regulatory basis)

c) absence of grounds for exemption from legal liability;

d) the existence of a law enforcement act, i.e., a decision of a competent authority that imposes legal liability and determines the type and extent of state influence (e.g., an administrative order, a court verdict) - a procedural basis.

Having outlined the grounds for bringing and the onset of the state-compulsory form of legal liability, we should also mention the grounds for exemption from the latter established by sectoral legislation. In particular, the

Criminal Code of Ukraine provides for the following grounds for exemption from criminal liability in connection with:

1) effective repentance (Article 45 of the Criminal Code of Ukraine)

2) reconciliation between the perpetrator and the victim (Article 46 of the Criminal Code of Ukraine)

3) transfer of a person on bail (Article 47 of the Criminal Code of Ukraine);

4) change in the situation when the act committed by the person has lost its social danger or the person has ceased to be socially dangerous (Article 48 of the Criminal Code of Ukraine)

5) expiration of the statute of limitations (Article 49 of the Criminal Code of Ukraine). The statute of limitations does not apply in the case of crimes against peace and security of mankind, as provided for in Articles 449 - 451, 454 of the Criminal Code of Ukraine.

At the same time, Section VIII of the CCU defines the circumstances that exclude the criminality of an act: necessary defense (Art. 36); imaginary defense (Art. 37); detention of the person who committed the crime (Art. 38); extreme necessity (Art. 39); physical or mental coercion (Art. 40); execution of an order or instruction (Art. 41); an act involving risk (Art. 42); performance of a special task to prevent or detect criminal activity of an organized group or criminal organization (Art. 43).

Other branches of legislation (administrative, civil, labor, etc.) also have their own grounds for bringing, imposing, and exempting from legal liability.

Based on the above, it can be concluded that for the positive form of legal liability, a formal (regulatory) basis is sufficient, while for the emergence and application of the negative form of its implementation, both formal and factual grounds are necessary.

Topic 4. Types of administrative penalties

1. The concept of administrative penalties.

2. Types of administrative penalties.

3. General rules for imposing administrative penalties.

1. The concept of administrative penalties.

Administrative liability is realized through the application of administrative penalties to the perpetrators.

Administrative penalties are a materialized manifestation of administrative liability, a negative legal consequence of the unlawful behavior of a person who has committed an administrative offense and must be held accountable for his or her unlawful act and be punished for it in the form of certain adverse moral, material and physical measures.

These penalties are the last link in the system of administrative coercion measures, a measure of responsibility and are applied to educate the person who committed the administrative offense in the spirit of observance of laws, respect for the rules of coexistence, and to prevent the commission of administrative offenses by the offender and other persons.

Article 24 of the CUAO establishes the following types of administrative penalties:

1) warning

2) a fine

3) paid seizure of an object that was an instrument or direct object of an administrative offense;

4) confiscation of an object that became an instrument or direct object of an administrative offense; money obtained as a result of an administrative offense;

5) deprivation of a special right granted to a given citizen (the right to drive vehicles, the right to hunt);

5-1) community service

6) correctional labor

7) administrative arrest.

Foreigners and stateless persons may be subject to administrative expulsion from Ukraine for committing administrative offenses (in addition to those provided for in Article 24 of the Code of Administrative Offenses).

2. Types of administrative penalties.

The system of administrative penalties allows to distinguish types of administrative penalties from their list:

1. According to the procedure of application, administrative penalties are divided into those that:

- may be applied as basic and additional (paid seizure and confiscation of an object that was an instrument of commission or direct object of an administrative offense);

- can be applied only as the main ones (all other types of administrative penalties).

2. By the nature of the impact on a person, administrative penalties are divided into:

- personal, which are aimed at the person of the offender (warning, administrative arrest, community service);

- property, which are aimed at the property status of the offender (fine, paid seizure of an object, confiscation of an object, correctional labor);

- personal and property (deprivation of a special right).

3. Depending on the subject of application, administrative penalties are divided into those that:

- applied only by courts (paid seizure of an object, confiscation of an object, deprivation of a special right, correctional labor, community service, administrative arrest);

- applied by other authorities and officials (warning, fine, expulsion from Ukraine).

A warning (Article 26 of the Code of Administrative Offenses) is applied as an independent measure for minor administrative violations, as well as to persons who have committed an offense for the first time and have good characteristics. The content of a warning as a measure of administrative punishment is an official condemnation of an unlawful act by an administrative jurisdiction body on behalf of the state and a warning to the offender about the inadmissibility of such actions in the future. It is designed to have an educational effect and does not affect the property or other rights of the offender.

Like any other penalty, a warning requires legal formalization in the form of a written decision that meets the requirements of Article 283 of the Code of Administrative Offenses. At the same time, the legislator provides for the possibility of recording a warning in another form established by law. Thus, Article 306 of the Code of Administrative Offenses stipulates that administrative penalties in the form of an on-the-spot warning for violations under Articles 116, 1162, 117, 125 and Part 1 of Article 127 of the Code of Administrative Offenses are issued in the manner prescribed by the Ministry of Internal Affairs of Ukraine or the Ministry of Transport. The warning, as well as any main penalty, may be

accompanied by an additional penalty. Oral warnings by officials cannot be considered as a penalty.

A warning as an administrative penalty should be distinguished from a warning as a preventive measure of unlawful behavior.

The essence of a warning as a preventive measure is to explain to the offender the unlawful nature of his actions, demand their cessation, eliminate the violations committed and warn about the possibility of taking stricter coercive measures. This is formalized by the competent state authority in writing. At the same time, a specific time limit for fulfilling the obligation may be set.

A warning to cease unlawful behavior is an independent measure of restraint if the law stipulates that this measure should be applied to the offender first, and then, in case of failure to fulfill the legal obligation, a more severe one. For example, an unauthorized building may be demolished only if the citizen continues to violate the law even after receiving a warning.

A warning to cease unlawful behavior is issued if the offense is not yet complete, in order to stop unlawful behavior, and in cases established by law is a mandatory first coercive measure.

Thus, this measure differs from a warning as an administrative penalty in that the penalty is imposed for a certain offense by a competent state body by issuing a special resolution.

Penalty (Article 27 of the Code of Administrative Offenses) is a monetary penalty imposed on citizens and officials for administrative offenses in cases established by the legislation of Ukraine.

It should be noted that this is an exclusively monetary penalty. The current legislation on administrative offenses does not provide for other forms of fines (e.g., a fine in kind).

In administrative and jurisdictional practice, a fine is the dominant type of penalty, which is provided as the sole or alternative measure of liability for most administrative offenses.

An administrative fine is not a compensatory penalty. This distinguishes it from a civil penalty. The first (administrative fine) is a measure of influence on the psyche and property status of the offender. The latter is compensation for material damage caused by a breach of contractual obligations.

According to the Law of Ukraine "On Amendments to the Code of Ukraine on Administrative Offenses to Strengthen Administrative Liability in the Form of a Fine" of February 7, 1997, the tax-free minimum income of citizens is adopted as the unit of calculation of an administrative fine.

As an administrative and legal sanction, a fine is characterized by:

1) state coercion

2) restriction of property interests of those to whom it is applied

3) simultaneous (one-time) collection.

The fine must be paid by the violator no later than 15 days from the date of delivery of the decision to impose the penalty, and in case of appeal or protest - 15 days from the date of notification of the dismissal of the appeal or protest. If a fine is imposed on a person aged 16 to 18 years who does not have independent earnings, the fine is collected from parents or persons in loco parentis.

If the fine is not paid within the prescribed period, the decision on its imposition is sent for enforcement to the department of the state executive service at the place of residence of the offender, work or at the location of his property.

The text of Article 258 of the Code of Administrative Offenses suggests that minor administrative offenses may be fined at the place of their commission. These

include: damage to the internal equipment of cars, windows in passenger trains, smoking in suburban train cars, smoking in unspecified places in local and long-distance trains, as well as in the subway (Art. 110); damage to the internal equipment of ships and smoking in unspecified places on these ships (Art. 115); operation of river or small vessels that are not registered in the prescribed manner or have not undergone a technical inspection; exceeding the speed limit by drivers of these vessels, parking in prohibited places, non-compliance with navigation signs, violation of navigation rules, sounding sound signals, carrying onboard lights and signals (Art. H and 5 of Art. 116); throwing garbage or other objects overboard of a river or small vessel (Art. 116); violation of passenger safety rules during disembarkation and embarkation when using river and small vessels, smoking in unauthorized places on river vessels (Parts 1 and H of Art. 117), etc.

A fine may be imposed and collected on the spot for offenses under Articles 70, 73, 77, 90, 91 and 153 if its amount does not exceed three tax-free minimum incomes (Article 258 of the Code of Administrative Offenses). When collecting a fine on the spot, the offender is issued a receipt of the established form, which is a document of strict accountability.

Paid withdrawal (Article 28 of the Code of Administrative Offenses) is applied exclusively by court decision and only to the object that became the instrument of commission or direct object of an administrative offense. It consists in the forced seizure of the object, its subsequent sale and transfer to the former owner of the proceeds, after deduction of the costs of sale. In fact, it involves the forced sale of property that was the personal property of the offender. This penalty may be the main or additional one.

The purpose of paid seizure is to exclude the possession of an item that is prohibited for use or used in violation of the established rules. This measure is more lenient than confiscation and differs from it in its paid nature.

In terms of its purpose, this penalty differs from such a measure as requisition. Requisition is the seizure of property from the owner in the state or public interest with payment to the owner of the value of the requisitioned property.

For example, Article 68 of the Merchant Shipping Code of Ukraine provides that in case of food shortage, "if all vital supplies, including the irreducible food supply, are exhausted, the master of the vessel has the right to requisition the necessary amount of food available to the persons on board for the purpose of general distribution and to requisition the cargo on board that can be used for food. An act of requisition is drawn up. The cost of the requisitioned food and cargo shall be reimbursed by the shipowner".

Confiscation (Article 29 of the Code of Administrative Offenses). The confiscation of an object that has become an instrument or direct object of an administrative offense is a compulsory free transfer of it to the state. Confiscation is carried out exclusively by court decision.

It is not a compensatory measure. Compensation for property damage is not included in the purposes of this penalty. Confiscation is also not related to the satisfaction of any state or public interests; its purpose as an administrative penalty is to force a person to fulfill his or her obligations.

Administrative and legal confiscation is always special (has a special character). This means that not all property and not all items are confiscated. Confiscation is carried out only with respect to things directly related to the offense and directly named in the law (guns, hunting tools, etc.).

Article 29 of the Code of Administrative Offenses emphasizes that only an item that is the personal property of the offender can be confiscated, unless otherwise provided by law. The fact is that to confiscate an item that does not belong to the offender means to punish the owner of the property who has not

committed an offense and is not subject to administrative liability. The confiscated item is transferred from personal property to the state.

Confiscation as an administrative penalty should be distinguished, firstly, from requisition; secondly, from seizure of things and documents as a measure to stop administrative offenses (Articles 260 and 265 of the Code of Administrative Offenses); thirdly, from seizure as a measure of prevention of administrative offenses; fourthly, from confiscation as one of the additional punishments for committing crimes (Articles 51 and 59 of the Criminal Code); fifthly, from seizure carried out in a civil law manner (Articles 105 and 136 of the Civil Code).

Article 55 of the Law of Ukraine "On Property" stipulates that in the event of an emergency: in cases of natural disasters, accidents, epidemics, epizootics, property in the public interest may be seized (requisitioned) from the owner by a decision of the state authorities in the manner and under the conditions established by the legislative acts of Ukraine with payment of the value of the property.

Seizure of items as a measure to stop administrative offenses is applied out of court on the basis of Articles 260 and 265 of the Code of Administrative Offenses.

Items and documents are subject to seizure that are, firstly, found during the detention of the offender, his personal search or inspection of his belongings; secondly, are the instrument or direct object of the offense.

They are seized by officials of the control and audit service, tax service, consumer protection, internal affairs, paramilitary security, civil aviation, customs, border troops, etc. (Articles 2341, 2342, 2441, 262 and 264 of the Code of Administrative Offenses).

Seized items and documents are stored until the case on an administrative offense is considered in places determined by the bodies (officials) authorized to seize items and documents, and after the case is considered, depending on the

results of its consideration, they are confiscated or returned to the owner in accordance with the established procedure, or destroyed, and in case of paid seizure of items, they are sold.

Seized orders, medals, badges of honor of the USSR, honorary titles of the Ukrainian SSR, Honorary Diploma and Diploma of the Presidium of the Supreme Soviet of the Ukrainian SSR, honorary titles of Ukraine, awards of the President of Ukraine shall be returned to their rightful owner after consideration of the case, and if the owner is unknown, shall be sent to the Administration of the President of Ukraine.

Seized moonshine and other home-made strong alcoholic beverages and devices for their production shall be destroyed by police officers after the case is considered.

A protocol is drawn up on the seizure of things and documents or a corresponding entry is made in the protocol on an administrative offense, on the inspection of things or administrative detention.

In the case of violations under Articles 174.190-1954 of the Code of Administrative Offenses, a police officer may seize firearms, airguns with a caliber of more than 4.5 millimeters and a bullet velocity of more than 100 meters per second, as well as cold steel, ammunition, stun devices and special equipment.

Seizure for the purpose of preventing offenses is allowed in respect of items that are legally owned, but specific circumstances allow the relevant state authorities to decide on their seizure administratively in accordance with applicable law. This measure is distinguished from other types of seizure by the absence of a link to a specific offense. It is purely preventive in nature and its purpose is to eliminate conditions that may contribute to the commission of an offense.

Thus, in the event of a state of emergency, the authorities implementing the state of emergency may temporarily seize registered firearms and cold steel from citizens.

Confiscation as one of the additional penalties for committing crimes is carried out exclusively by court order, is an additional punishment for the crime committed, and may apply to all or part of the convicted person's property, regardless of the connection of the confiscated items with the criminal act.

Seizure on the basis of civil law provisions is carried out only in court with a corresponding claim.

Deprivation of special rights (Article 30 of the Code of Administrative Offenses). Deprivation of rights is a restriction of a citizen's legal personality in an administrative procedure for administrative offenses. This measure is applied to those subjective rights that were previously granted to the subject by public authorities. If a citizen misuses the right granted to him/her, the public administration body temporarily deprives him/her of this right.

Among the penalties, the CUAO names only two types of deprivation of a special right: the right to drive (Articles 108, 116, 122, 123, 124, 130, etc.) and the right to hunt (Article 85).

This penalty is provided for gross or systematic violation of the procedure for exercising the right. It is applied by the court and authorized officials.

In all cases of application of this penalty, it is a deprivation of special rights that differ from the constitutional rights that citizens have from birth or that arise as a result of acquiring legal capacity. Their main feature is that they are personalized, i.e. given to a specific person in a permissive manner.

Deprivation of rights, being a penalty, at the same time fulfills the task of stopping illegal activity, it successfully combines punitive and termination aspects. It solves the preventive task not only by correcting and re-educating the offender,

but also by depriving him or her of the opportunity to commit similar offenses again.

Public works (Article 301 of the Code of Administrative Offenses). The penalty in the form of community service is imposed on the basis of the offender's participation in socially useful work and consists of the offender performing free work in his/her free time.

The types of such work and the facilities where the offenders will serve the penalty are determined by local governments. They are coordinated with the criminal executive inspection that implements this penalty.

Community service is ordered by a court for a period of twenty to sixty hours and is performed for no more than four hours a day. Only the time during which the offender performed socially useful work at designated facilities, as confirmed by the notification of the owner of the enterprise, is counted as time served.

Community service is not assigned to persons recognized as disabled of the first or second group, pregnant women, as well as women over 55 years of age and men over 60 years of age.

In case of disability, call-up for military service, detention, conviction to a criminal sentence of imprisonment or restriction of liberty, or if the person's whereabouts are unknown, a court order replaces community service with a fine. The amount of the fine is determined based on the following calculation: four hours of unfulfilled community service is equal to one tax-free minimum income.

The performance of community service is regulated by the “Procedure for the Execution of Administrative Penalties in the Form of Community Service and Correctional Work”, approved by Order of the Ministry of Justice of Ukraine No. 474/5 dated 19.03.2013. In all cases, community service is established by the legislator as part of alternative sanctions.

Corrective works (Article 31 of the Code of Administrative Offenses) is an ongoing property penalty. It is imposed for a period of up to two months with the perpetrator serving time at the place of permanent employment and with deduction of up to 20 percent of his/her earnings to the state.

Corrective labor is appointed in court and is carried out in accordance with the "Procedure for the Execution of Administrative Penalties in the Form of Community Service and Corrective Labor". This sanction applies only to offenders who have a permanent job. It cannot be applied to disabled persons (old age pensioners, disabled persons, pregnant women). In addition, according to Article 15 of the Code of Administrative Offenses, correctional labor cannot be applied to military personnel called up for military training, and to rank-and-file and senior officers of internal affairs agencies.

This penalty is applied for administrative offenses that are close to criminal acts in terms of their degree of public danger. These are petty theft (Article 51), evasion of compensation for property damage caused by a crime (Article 511), disorderly conduct (Article 173), malicious disobedience to a lawful order of a police officer (Article 185), etc.

Correctional labor is imposed only as the main penalty and is carried out exclusively at the offender's place of permanent work. Deductions are made from earnings at the main place of work, part-time work, fees received under contracts and labor agreements. They are not allowed from pensions, financial assistance, and one-time payments.

In addition to deductions of monetary amounts to the state revenue, correctional labor involves a number of other property and labor restrictions. For example, during the period of correctional labor, it is prohibited to take regular vacation, the time spent serving correctional labor is not included in the length of service, and voluntary dismissal is not allowed, except in certain cases (transfer to a job with better working conditions, a job in a specialty, etc.)

In all cases, correctional labor is established by the legislator as part of alternative sanctions.

Administrative arrest (Article 32 of the Code of Administrative Offenses). This penalty is imposed for administrative offenses that are close to crimes in terms of their degree of public danger. Arrest is the most severe of all types of administrative penalties. Therefore, the legislator explicitly states that administrative arrest is applied only in exceptional cases for certain types of administrative offenses. The same circumstance explains the use of this penalty only in alternative sanctions.

Administrative detention is imposed only by a court (judge) for up to 15 days. It is not applied to pregnant women, women with children under the age of 12, persons under the age of 18, disabled persons of groups 1 and 2 (Article 32), as well as military personnel called up for military training, and rank and file and senior officers of internal affairs bodies (Article 15).

The exclusivity of administrative arrest means that the possibility of applying alternative measures to the offender has been carefully studied and found to be inappropriate. In this regard, the sanctions of Art. 173 “Disorderly conduct”, Art. 178 “Drinking alcohol in public places and appearing in public places in a drunken state”, Art. 185 “Malicious disobedience to a lawful order or demand of a police officer, member of a public formation for the protection of public order, or military personnel”, Art. 1851 “Violation of the procedure for organizing and holding meetings, rallies, street marches and demonstrations” are typical. They emphasize that these offenses entail administrative arrest only if, taking into account the circumstances of the case and the personality of the offender, other measures of influence are deemed insufficient.

Under current legislation, administrative detention is provided for the following types of offenses: illegal production, acquisition, storage, transportation, transfer of narcotic drugs or psychotropic substances without the purpose of sale in

small amounts (Article 44); disorderly conduct (Article 173); drinking alcohol in public places and appearing in public in a drunken state (part. H of Article 178); malicious disobedience to a lawful order or demand of a police officer, member of a public formation for the protection of public order, or a military serviceman (Article 185); violation of the procedure for organizing and holding meetings, rallies, street marches and demonstrations (Article 1851); contempt of court (Article 1853).

In addition, administrative arrest is provided for as a consequence of a person's evasion from serving correctional labor imposed for committing disorderly conduct. Pursuant to Article 325 of the Code of Administrative Offenses, a judge's decision may replace the unexpired term of correctional labor with administrative arrest at the rate of one day of arrest for three days of correctional labor, but not more than 15 days.

Forced expulsion of foreigners. The Law of Ukraine of January 18, 2001 "On Amendments to Certain Legislative Acts of Ukraine on Combating Illegal Migration" supplemented Article 24 of the Code of Administrative Offenses with the following part: "The laws of Ukraine may provide for the administrative expulsion of foreigners and stateless persons from Ukraine for committing administrative offenses that grossly violate law and order."

The above indicates the following: first, the placement of this provision in a separate part of the article entitled "Types of Administrative Penalties" gives grounds to believe that administrative expulsion of foreigners and stateless persons from Ukraine is an administrative penalty; second, administrative expulsion must be provided for by the laws of Ukraine; third, administrative expulsion applies only to foreigners and stateless persons; fourth, the grounds for administrative expulsion are the commission of administrative offenses.

An important feature of the forced expulsion of foreigners is that none of the articles of the Special Part of the Code of Administrative Offenses provides for

such sanctions. Its regulation is contained in the Law of Ukraine of September 22, 2011. “On the Legal Status of Foreigners and Stateless Persons. According to this law, expulsion is carried out by authorized entities on the basis of an administrative court decision. Persons who have failed to comply with a decision on forced return within the established time limit without good reason or if there are reasonable grounds to believe that the foreigner or stateless person will evade the execution of such a decision are subject to expulsion.

In addition, it is necessary to briefly describe the measures of influence applied to minors:

- an obligation to apologize to the victim in public or in another form;

- warning

- reprimand or severe reprimand;

- placing a minor under the supervision of parents or persons in loco parentis, or under the supervision of a teaching or labor collective with their consent, as well as to individuals at their request (Article 241 of the CAO).

These measures are of an educational nature and may be applied to minors who have committed an administrative offense between the ages of 16 and 18 if the administrative authority concludes that the offender can be corrected without imposing a more severe administrative penalty. Taken together, these measures form a system that is built with the increasing importance of coercive measures in mind: from less severe to more severe.

3. General rules for imposing administrative penalties.

The imposition of an administrative penalty is an important legal fact. From the moment it occurs, a person is held administratively liable and must comply with the requirements imposed on him or her by the legislator.

Based on this, the legislator not only carefully prescribes and records the types of penalties, but also establishes rules for their imposition. These rules are presented in the form of substantive provisions in Chapter 4 of the Code of Administrative Offenses, “Imposition of Administrative Penalties.”

The Code of Ukraine on Administrative Offenses regulates the imposition of penalties in case of several (two or more) offenses committed by the same person. The relevant article (Art. 36) discusses two cases of such situations.

The first is the case when cases are considered by different jurisdictions or by the same jurisdiction, but not simultaneously. In this case, the penalty is imposed for each offense separately.

The second is the case when the cases are considered simultaneously by the same jurisdiction. In this case, the penalty is imposed within the sanction established for the more serious offense among the committed ones. At the same time, the main penalty may be supplemented by one of the additional penalties provided for in the articles on liability for any of the offenses committed.

Particular attention is paid to issues related to the time limits that objectify the fact of imposing an administrative penalty (Articles 37, 38, 39 of the CUAO).

First, the legislator establishes the procedure for calculating the time limits (Article 37 of the Code of Administrative Offenses). The time limits are calculated depending on the type of penalty. The term of administrative arrest is calculated in days. Corrective labor - in months or days. Deprivation of a special right - in years, months or days. The term of a penalty in the form of community service, in accordance with the “Procedure for the Execution of Administrative Penalties in the Form of Community Service and Correctional Labor”, is calculated in hours during which the offender performed the specified socially useful work.

Secondly, the time limits for imposing an administrative penalty are established (Article 38 of the CUAO). The time limits are applied: a) according to the general rule and b) according to special rules.

The general rules apply to all cases, except for those specifically regulated (those subject to special rules). As a general rule, a penalty may be imposed no later than two months after the date of the offense. In the case of a continuing offense, a penalty may be imposed no later than two months from the date of its discovery (an exception to this rule is when cases of administrative offenses are under the jurisdiction of a court).

The application of special rules is conditioned by: a) the jurisdiction of the court, b) the object of the offense, c) the closure of criminal proceedings.

Thus, if administrative offense cases are under the jurisdiction of the court, the penalty may be imposed no later than three months after the date of the offense, and in case of a continuing offense - no later than three months after the date of its detection.

If the object of the offense is relations in the field of preventing and combating corruption, the penalty may be imposed within three months from the date of detection of the offense, but not later than one year from the date of its commission. An administrative penalty for committing an offense under Article 16414 of the Code of Administrative Offenses (the object of the offense is relations in the field of procurement of goods, works and services for public funds) may be imposed within three months from the date of detection, but not later than two years from the date of its commission.

In case of closure of the criminal proceedings, but if the violator's actions have signs of an administrative offense, an administrative penalty may be imposed no later than one month after the date of the decision to close the criminal proceedings.

Thirdly, the legislator defines the period after which a person is considered not to have been subjected to an administrative penalty (Article 39). This period is one year from the date of completion of the penalty.

Topic 5. Concept, objectives and system of criminal law of Ukraine.

1. The concept of criminal law

The concept of "criminal law" is usually considered in theory in four meanings:

1) criminal law as a branch of legislation, which is manifested in a single legislative act - the Criminal Code of Ukraine;

2) criminal law as a branch of legal science

3) criminal law as a branch of law;

4) criminal law as an academic discipline.

Criminal law as a branch of legislation - is a system of criminal law norms formulated and adopted, as a rule, by the Parliament of Ukraine as laws that define the grounds and principles of criminal liability, as well as which socially dangerous acts are criminal and what punishments should be applied to the perpetrators. The main features of criminal law as a branch of legislation are as follows:

- its rules are established only by the highest legislative body - the Parliament of Ukraine;

- it is manifested in laws;

- the method of implementation of the criminal law is specific, inherent only to this law - it is the punishment of a person for violation of a criminal law prohibition.

The **subject** matter of criminal law as a branch of legislation is the relations arising from the commission of a crime and the application of the appropriate punishment for its commission.

The **objectives** of criminal law as a branch of legislation are set out in Article 1 of the CC: legal support for the protection of human and civil rights and freedoms, property, public order and public safety, the environment, the

constitutional order of Ukraine from criminal encroachments, ensuring peace and security of mankind, as well as prevention of crime.

From the content of Part 1 of Art. 1 it follows that the two main tasks of the CC are:

1) legal provision of protection of certain social relations and social goods

2) prevention of crimes.

The objects protected by the CC are human and civil rights and freedoms, property, public order and public safety, environment, constitutional order of Ukraine, as well as peace and security of mankind. The provisions of the CC protect only the most important elements of these objects. Less important social relations and social goods are protected by legal norms of other branches of law (in particular, administrative, civil and labor law).

Human and civil rights and freedoms should be understood primarily as those rights and freedoms provided for in Section II of the Constitution of Ukraine (the right to life, liberty, security of person and home, secrecy of correspondence and other correspondence, confidentiality of personal and family life, association in public organizations and political parties, holding meetings, rallies and other mass actions, work, rest, strike, social protection, housing, healthcare, as well as the right to elect and be elected to state and local government bodies, access to state and municipal service, property rights, freedom of movement, freedom of speech and thought, freedom of conscience, and others). In addition, the rights and freedoms of citizens are established by other laws of Ukraine, in addition to the Basic Law.

Criminal law protection of certain human and civil rights and freedoms is applied if there is a public need for such protection.

The concept of “person” in the CC means an individual, a human being in the biological sense of the word. At the same time, the CC protects a person both as a biological being, prohibiting encroachments on life, health, bodily and sexual inviolability, personal freedom, and as a social being, a personality - in this case, protection of honor and dignity, political, socio-economic and other human rights

and freedoms is ensured. The rights and freedoms of not only Ukrainian citizens, but also foreigners and stateless persons who are in Ukraine and enjoy the relevant rights and freedoms in accordance with the Constitution, laws of Ukraine, international treaties ratified by the Verkhovna Rada of Ukraine, are subject to criminal law protection.

Property as an object of criminal legal protection means material objects of a certain value and a set of social relations related to the possession, use and disposal of such objects.

Public safety should be understood as a state of social relations in which natural, technical and other sources of general danger, which a person affects through his or her activities, do not pose a danger to human life and health and to the safety of material assets.

Public order is a state of social relations that ensures calm conditions for socially useful activities, recreation and everyday life.

2. Subject and method of criminal law regulation.

Criminal law performs several important functions, namely

- protective
- regulatory
- educational
- preventive.

Criminal law (along with other social and legal regulators) protects social values created by centuries of human activity from potential (possible) criminals and criminal encroachments. This is the protective function of criminal law.

The **protective function** of criminal law is exercised through the regulation of criminal law relations that arose during the commission of a crime and the application of appropriate punishment to the person who committed the crime. In this case, the regulatory effect of criminal law is a form of manifestation of its protective task. At the same time, criminal law also manifests itself in the prohibition of committing a criminal act (preventive function) and the threat of punishment to those who may commit such an act (general prevention), and in the

application of punishment to the person who committed the crime (special prevention).

Thus, the **protective function** of criminal law is exercised through the regulation of criminal law relations and by means of general and special prevention (crime prevention).

It should be noted that some criminal law provisions perform regulatory functions. These are the norms on necessary defense (Article 36), on inflicting harm to the offender during his/her detention (Article 38), on extreme necessity (Article 39), etc.

The law on criminal liability also performs an **educational function**. For example, release of a minor from punishment with the use of compulsory educational measures under part 1 of Article 105 of the CC is possible when he/she commits a crime of minor or medium gravity, provided that his/her sincere repentance and further impeccable behavior indicate that at the time of sentencing he/she does not need to be punished.

At the same time, criminal law also manifests itself in the prohibition of committing a criminal act (preventive function) and the threat of punishment to those who may commit such an act (general prevention), and in the application of punishment to the person who committed the crime (special prevention).

Thus, the **protective function** of criminal law is exercised through the regulation of criminal law relations and by means of general and special prevention (crime prevention).

If we imagine the totality of social relations subject to protection by criminal law as a huge warehouse, then criminal law, according to M. Kovalev, will play the role of a watchman (sentry) ready to repel any intrusion into the protected object The watchman (sentry) is a rather primitive model of one of the main functions of criminal law, although it reflects its essence quite accurately.

Naturally, these functions are unequal in terms of the conditionally expected social result of their realization. One of them (regulatory) primarily solves tactical tasks, while the other (protective) is designed for the long term However, acting

together, they interconnectedly constitute the essence of the mechanism of criminal law regulation.

Proceeding from the general theoretical postulate, the formation of separate branches of law can be explained and justified primarily by the specifics of the subject matter of regulation.

Subject to legal regulation criminal law as a branch of legislation is the relationship arising from the commission of a crime and the application of appropriate punishment for its commission.

Revealing the essence of the subject matter of criminal law regulation, we can distinguish two main areas of human existence in which criminal law rules are actively functioning

1) the sphere of lawful behavior of citizens when causing damage in the presence of circumstances that exclude the criminality of the act (necessary defense, extreme necessity, detention of the person who committed the crime, etc;)

2) criminal behavior.

The only component of these spheres is a criminal law (abnormal) relationship, which indicates the existence of a social conflict caused by a criminal act of one of the parties to this relationship. Actually, these relations are the subject of criminal law regulation, because only the existence of this type of relations between people removes the fuse of the regulatory mechanism, which is always in a state of high alert. With the disappearance of this relationship, the regulatory function gives way to the security function, which (unlike the regulatory function) does not stop. It operates continuously from the moment the relevant criminal law enters into force until its complete repeal.

Method of legal regulation - is a set of certain means by which relations between people, between citizens and organizations, and between citizens and the state are regulated and protected.

The method of regulating criminal law relations is coercive and is usually applied only to a person who has committed a crime through punishment. The criminal law method is applied only if:

1) the act committed is socially dangerous and, according to the law, contains the elements of a specific crime;

2) the person who committed the act was of sound mind, reached the age established by law at the time of its commission and is subject to punishment.

In some cases provided for by law (Articles 75 and 47), the court may postpone the execution of the criminal penalty or not apply such penalty at all.

Methods of science - are the methods and techniques by which the phenomena of objective reality that make up the subject of a particular science are cognized. There are various methods used by the science of criminal law. Among them, we can distinguish between the main and auxiliary ones. However, they are all closely interrelated and complement each other.

The main methods of criminal law science (as well as of all jurisprudence) include: philosophical or dialectical method of cognition; legal or dogmatic method; sociological method; method of systematic analysis; comparative jurisprudence or comparative method; historical (genetic) method of research.

1. The system of criminal law

Criminal law is structurally divided into General and Special Parts Nowadays, no one doubts the need for such a gradation. However, even before the eighteenth century, there were separate criminal laws that defined specific crimes and provided for certain sanctions for them.

The general part unites the rules defining the objectives, principles and basic institutions of criminal law. They set out the grounds for criminal liability; the effect of criminal law in space and time; the concept of crime and its types; sanity and insanity; forms of guilt; complicity; punishment and its types; the procedure for applying certain types of punishment, the rules for their appointment; regulate institutions related to exemption from criminal liability and punishment, expungement and removal of a criminal record; and define the specifics of juvenile liability.

The special part of criminal law specifies the scope and content of criminal liability for each crime The rules of both parts of criminal law are closely and inseparably linked, since it is virtually impossible to apply the rules of the Special Part without the rules set forth in the General Part. Their inseparability is determined by the unity of content.

Institutions of the General Part play the role of a kind of criminal law matrix; they are fundamental provisions that define the entire system of criminal law and the structure of its Special Part, the range of its institutions and the list of acts recognized as crimes.

The norms of the General and Special Parts of the Criminal Law as certain subsystems of the Criminal Code of Ukraine are in close and inseparable unity. First of all, the provisions of the Special Part are based on the provisions of the General Part. Therefore, it is impossible to reveal the true meaning of the provisions of the Special Part without referring to the General Part. At the same time, all the institutions of the General Part basically generalize the features inherent in all the crimes provided for in the Special Part. It is also impossible to apply certain types of punishments for crimes under the Special Part without taking into account the provisions enshrined in the General Part regarding the purpose, types, limits and procedure for imposing all punishments. The very system of punishments defined in the General Part finds its manifestation and practical application only through the imposition of specific punishments for certain crimes provided for in the Special Part of the CC.

The inextricable link between the provisions of the General and Special Parts of the CC is also in the fact that when qualifying acts, resolving issues related to exemption from criminal liability and punishment, the provisions of both parts are applied simultaneously. Thus, when qualifying an attempted crime, both the provisions of the General Part and the provisions of the Special Part, which provide for the crime that was attempted, are applicable. For example, an attempted murder is qualified under Part 1 of Article 15 and Part 1 of Article 115 of the CC.

The unity of the General and Special Parts of the CC ensures internal consistency of the institutions and provisions of the Code and, ultimately, the effectiveness of their application.

Thus, the norms of the General Part combine the most general criminal law provisions and thus delegate their features to the institutions of the Special Part, orienting the legislator to the optimal scope and content of corpus delicti, types and amounts of punishment. That is why the norms of the General Part of criminal law are mainly binding, suggesting that the judicial authorities be guided by the provisions provided for in them or take them into account when applying the norms of the Special Part. This demonstrates the organic connection between the General and Special Parts of criminal law at the level of law enforcement.

The Criminal Code of Ukraine in both its parts legally enshrines elements of criminal law - criminal law institutions. The word “institution” means “establishment”, which means that in the most general sense, everything in the field of law can be called an institution, starting with the law itself and ending with its specific norms.

Criminal law science is interested in a legal concept that would be filled with clear and appropriate content. When defining an institution, one should not be limited to a certain type or aspect of the homogeneous social relations it regulates. This may lead to the impossibility of identifying a separate, qualitatively new institution in the multicolored legal matter. However, one cannot agree with the position of Professor O. Joffe, who believed that the really reliable criterion for resolving this issue is the intra-branch method inherent in the institution. After all, the institutes of the Special Part of the Criminal Code of Ukraine apply only one method of establishing criminal liability possible in this area of law. Agreeing with Professor V. Yakushev, we believe that a legal institution is a set of rules based on law which should ensure regulation within the subject matter of this branch of law of a certain, relatively independent social relation, as well as related derivative relations.

According to E. Tenchov, in criminal law, two subsystems of legal institutions (general and special) naturally arise and are accordingly enshrined in the structure of codes, the largest of which are the institutions of crime and punishment.

As is well known, Professor O. Joffe first noted that an institute is not only not the last subdivision of a branch of law after a rule (there are also sub-branches), but also not always the first subdivision that follows from it, because independent organic formations sometimes exist within an institute. Such entities could be called sub-institutions. That is, institutions, in turn, encompass sub-institutions that are smaller in scope but significant in content: for example, stages of crime, complicity, multiplicity, the penal system, criminal record, etc.

Subinstitutions consist of separate norms (usually articles of the criminal law) containing not only hypothesis, disposition and sanction, but also in certain cases different types of corpus delicti (parts of articles of the criminal law): simple, privileged, qualified and especially qualified.

The above convinces us of one thing: the development of the criminal legal system, which is based on the current criminal law, must be carried out continuously and taking into account a variety of factors: social, political, legal and historical.

Topic 6. Family legal relations

1. Concept and types of family legal relations

2. Participants in family legal relations

3. Grounds for the emergence of family legal relations

1. Concept and types of family legal relations

Given that family relations are practically absorbed by civil relations, which according to Art. 1 of the Civil Code are personal non-property and property relations based on legal equality, free will and property independence of their participants, family relations can be defined as personal non-property and property relations arising from marriage, consanguinity, adoption, fostering, guardianship

and custody, and based on legal equality, free will and property independence of their participants.

It is worth mentioning that the literature has repeatedly attempted to prove that family legal relations are an independent category that differs from the concept of civil legal relations.

But so far, none of the arguments, especially in the context of expanding the understanding of the subject matter of civil law regulation, seems convincing enough. After all, the current Civil Code regulates both property and personal non-property relations, thus eliminating the criterion of distinguishing between civil (mainly property) and family (mainly non-property) relations, which was characteristic of Soviet civil law.

In order to determine the relationship between civil and family relations, it should be borne in mind that both personal non-property and property relations may be considered civil relations if they have the following characteristics

1) participants of such relations act as legally equal subjects in relation to each other;

2) their subject matter is relations arising from tangible and intangible goods;

3) the method of legal regulation is based on the principles of initiative of the participants and dispositivity of the rules;

4) the content of relations is a set of civil rights and obligations of their participants;

5) protection of civil rights and compulsion to fulfill legal obligations is carried out by means of specific measures of influence and, as a rule, in court.

Obviously, given the fact that family relations look like a type of civil relations (and in fact they are), the legislators in Art. 1 of the FC (and many legal scholars with them) do not focus on the defining features of family relations, but rather focus on defining the essence and concept of family relations by establishing an approximate list of the latter, indicating that the FC defines the principles of marriage, personal non-property and property rights and obligations of spouses, the grounds for the emergence, content of personal non-property and property rights

and obligations of parents and children, adoptive parents and adopted children, other family members and relatives. Thus, it is the relations related to these institutions that are voluntarily defined by the legislator as family relations, which is evident in Article 2 of the FC. In this regard, it should be noted that the title of Art. 2 of the FC - “Participants of Family Relations Regulated by the Family Code of Ukraine” - generally does not correspond to its content, since it does not contain a characterization of participants of family relations, but only emphasizes that a certain subject composition is a criterion for classifying (or not classifying) personal non-property and property relations as family relations.

Being regulated by the norms of family law (Family Code, etc.), these relations acquire the properties of legal relations. Thus, family legal relations are family relations regulated by family law.

Since Art. 2 of the Family Code divides participants of family relations into 3 groups, it is possible to distinguish 3 types of family relations by their subjective composition.

The first group includes personal non-property and property relations between spouses, parents, children, adoptive parents and adopted children, and between the mother and father of a child regarding the child's upbringing, development and maintenance.

The second group is the relationship between grandparents, great-grandparents, great-grandparents and grandchildren, great-grandchildren, siblings, stepmother, stepfather, stepdaughter, and stepson.

The third group of relationships is the relationship of guardianship and custody of children (Chapter 19 of the Family Code), and the relationship of patronage of children (Chapter 20 of the Family Code).

Accordingly, 3 groups of family legal relations should also be distinguished, taking into account that in each group there are separate types of legal relations: legal relations between spouses; legal relations between parents and children; legal relations between adoptive parents and adopted children; legal relations between grandparents, great-grandparents and grandchildren; legal relations between great-

grandparents and great-great-grandchildren; legal relations between siblings; legal relations between stepmother, stepfather and stepdaughter, stepson; legal relations of guardianship and custody over children; legal relations of patronage over children. Each of these types of family legal relations has its own peculiarities of subject composition, objects, content and grounds for their occurrence.

It is worth noting that the classification of family legal relations, which are inherently civil legal relations and belong to the general legal category of legal relations, is also possible according to the criteria used for the general classification of legal relations in general and civil legal relations in particular. Thus, they can be divided into general and specific, personal non-property and property, absolute and relative, in rem and in obligation, substantive and procedural (procedural), etc.

2. Participants in family legal relations

The FC refers not to "participants of family legal relations" but to "participants of family relations", which should suggest that the Code distinguishes between these concepts. However, the author of the draft of the FC, Z.V. Romovska, defines these concepts as equivalent1 2 , which obviously corresponds to the concept of the FC. Therefore, further analysis of the status of "participants in family legal relations" will be based on the provisions of Article 2 of the FC, which lists "participants in family relations".

The first group of participants in family legal relations includes spouses, parents, children, adoptive parents and adopted children. Personal non-property and property relations that arise and exist between such persons in the course of their cohabitation in a family are considered "family" and are regulated primarily by the Family Code.

Spouses are a woman and a man who are married, registered in the state civil registry office (part 1 of Article 21 of the FC). It should be emphasized that these persons acquire this legal status only if they are in a registered marriage with each other.

A person who has not reached the age of majority has the legal status of a child (Article 6(1) of the Family Code). He or she is a participant in family legal relations with certain men and women, if he or she is descended from them. A female child is a daughter. A male child is a son. It should be noted that the legislator uses the term “child” in part 1 of Article 6 of the FC in a narrow sense, since after reaching the age of majority a person does not cease to be a “child” in the broad sense and does not lose ties with his/her parents. This is also supported by the presence in the Family Code of norms that regulate the relationship between parents and children not only before the latter reach the age of majority, but also afterwards.

Parents are a man and a woman from whom a child is descended. The man is called the “father” and the woman is called the “mother”. Parents are in a natural or “legitimized” (i.e., based on a legal prescription, court decision, etc.) legal relationship with the child.

Adopters and adoptees are persons whose relationship is based on adoption, i.e., the adoption of a child by a man and/or woman into their family as a daughter or son in accordance with the procedure established by law (Article 207 of the Family Code).

A special type of such relationship is the relationship between the child's mother and father regarding the child's upbringing, development and maintenance. Even if such persons are not spouses, i.e. are not in a registered marriage, their relations regarding the upbringing, development and maintenance of the child are considered “family” and are subject to the provisions of the Family Code. Here we are dealing with a fiction - a quasi-family relationship.

The second group of participants in family legal relations includes grandparents, great-grandparents, grandchildren, great-grandchildren, siblings, stepmother, stepfather, stepdaughter and stepson.

This group should include, first of all, persons belonging to the second and third degrees of direct and indirect kinship, as well as persons in “quasi-family relations”. The degree of kinship can be calculated using the following simple

formula: degree of kinship = number of births - 1. For example: grandfather and grandson are 3 births (grandfather + father + grandson) - 1 = second degree; brothers are 3 births (mother + son + son) - 1 = second degree of kinship.

Grandparents are the parents of an individual's parents (both male and female).

Great-grandparents are the parents of an individual's grandparents (both male and female).

Accordingly, grandchildren (grandchildren) are children of children of an individual, and great-grandchildren are grandchildren of children of an individual.

Siblings are persons descended from common parents.

A kind of "quasi-parents and children" are stepmother and stepfather, on the one hand, and stepdaughter and stepson, on the other.

The stepmother is the wife of the child's father, who is not the child's mother and has not adopted the child.

A stepfather is the husband of the child's mother who is not the child's father and has not adopted the child.

A stepdaughter is a daughter of a husband or wife who is not the daughter of the other spouse and has not been adopted by him or her.

A stepson is a son of one of the spouses who is not the son of the other spouse and is not adopted by him/her.

The circle of participants in family legal relations is significantly expanded by Part H of Article 2 of the FC, which includes any persons specifically mentioned in this Code. In particular, such persons are named in Chapters 19 and 20 of Section IV of the FC. These are participants in the relationship of guardianship and custody of children (Chapter 19) and the relationship of patronage of children (Chapter 20).

It should be noted that the list of persons who may be parties to family legal relations, as follows from parts 1-3 of Article 2 of the FC, is exhaustive: these are the persons specified in parts 1 and 2 of Article 2 of the FC and other family members specified in the Code. However, the legislators decided to emphasize this once again by providing in part 4 of this article for the circle of persons whose relations are not considered family relations and are not subject to the FC.

3. Grounds for family legal relations

In the general theory of law, the grounds for the emergence, termination and transformation of legal relations (or "legal facts") are real-life circumstances to which the rules of law relate the establishment, change or termination of legal relations.

A single legal fact may be sufficient to trigger legal consequences (e.g., the conclusion of a contract by civil law entities).

However, in reality, a set of facts is more often present, among which it is advisable to distinguish between:

1) a group of legal facts

2) a legal (factual) set.

A group of legal facts is several factual circumstances, each of which causes or may cause the same consequence. As a rule, it is enshrined in a single rule and represents phenomena of the same order.

A legal (factual) set is a system of legal facts interconnected in such a way that legal consequences occur only if all elements of this set are present. Thus, a legal set includes interdependent elements that individually may have no legal significance at all or may produce different consequences than those intended by the subjects of law.

Among the varieties of legal aggregate, a special place is occupied by the so-called legal states - circumstances characterized by relative stability and long duration of existence, during which they may repeatedly (in combination with other facts) cause certain legal consequences.

Article 49 of the Civil Code defines acts of civil status as events and actions that are inextricably linked to an individual and initiate, change, supplement or terminate his or her ability to be a subject of civil rights and obligations. Civil status acts include, in particular, the birth of an individual, establishment of his or her origin, acquisition of citizenship, renunciation and loss of citizenship, attainment of the appropriate age, granting full civil capacity, limitation of civil capacity, declaring a person incapacitated, marriage, divorce, adoption, deprivation

and restoration of parental rights, change of name, disability, death, etc. Some of the civil status acts are subject to state registration: birth of an individual and his/her origin, citizenship, marriage, divorce, change of name, death.

An analysis of the above list of legal statuses leads to the conclusion that although they are called “acts of civil status”, they are by their nature not only related to the sphere of civil law, but are even more so acts of public (or “administrative”) status. Thus, acquisition of citizenship or renunciation of citizenship does not, as a general rule, affect the civil status of an individual, but significantly affects the administrative status.

In addition, the following acts of legal status are inherently administrative (public) and subject to state registration: birth of an individual and his/her origin, citizenship, marriage, divorce, change of name, death. In such cases, their registration is an element of public order and is regulated by administrative law.

In view of the above, it is advisable to distinguish between: 1) public acts of legal status and 2) private acts of legal status.

Legal facts in family law can be systematized and classified according to various criteria.

Based on the nature of the consequences that arise as a result of certain circumstances, they can be divided into:

1) legal facts that establish law. Their existence is associated with the emergence of legal relations. For example, marriage registration gives rise to marriage and then family relations;

2) legal facts that change the law. The existence of these facts entails a change in the legal relationship that already exists (conclusion of a marriage contract after marriage registration)

3) legal facts that terminate the right. These are the circumstances that result in the termination of an existing legal relationship. For example, divorce terminates the relevant legal relationship;

4) legal facts that prevent the emergence or transformation of law.

These are circumstances that make it legally impossible to create, modify, terminate, etc. legal relations. For example, such an “impeding” fact is being in a close relationship that excludes the possibility of marriage (Article 26 of the Family Code);

5) legal facts that suspend the right. For example, the suspension of the limitation period in cases provided for in Article 263 of the Civil Code;

6) legal facts that restore the right. These include circumstances that result in the restoration of pre-existing rights. For example, if a person declared dead appears, the court cancels the relevant decision, and such a person may demand that other entities return the property belonging to him or her (Article 48 of the Civil Code). In this case, the restoration of property rights is subject to 2 circumstances: i) the appearance of the person declared dead; 2) the court's reversal of the decision to declare the person dead.

Along with the “ordinary” legal facts, family law also includes facts of legal relations. The essence of the latter is that for the emergence, termination, etc. of one legal relationship, the existence (or absence) of another legal relationship is of legal significance. Thus, for alimony legal relations to arise, a man and a woman must be married (Article 75 of the Family Code), unless the circumstances provided for in Article 91 of the Family Code are involved.

A common classification of legal facts in family law is based on the significance of the will of the subject of law for the emergence, termination or transformation of legal relations.

Depending on the will criterion, legal facts of family law are divided into:

1) actions, i.e., circumstances that depend on the will of a person

2) events - circumstances that arise and exist independently of a person's will and are beyond his or her control. The latter have legal significance in cases where they are specified in legislation or a contract as having legal consequences.

Actions, in turn, are divided into:

1) legitimate, i.e. not contrary to the law, permitted or not expressly prohibited by the law;

2) unlawful (offenses, torts)1.

Lawful actions are a type of lawful conscious behavior that differs from other manifestations of a person's existence (reflexes, instincts, etc.) by its volitional nature. In its simplest form, lawful behavior can be defined as the behavior of people that meets (does not contradict) the requirements of legal norms.

Unlawful acts (offenses, torts) as legal facts are characterized by the fact that they can only be those that create legal relations, in some cases - those that change them, or those that prevent the emergence of legal relations, but never those that terminate legal relations or those that restore rights and obligations.

Lawful actions in the field of family law can be divided into types depending on the degree of presence of the volitional criterion into:

1) legal acts;

2) legal deeds.

Legal acts are the main, determining type of legal facts. In their most general form, they can be defined as actions of legal entities specifically aimed at establishing, changing, terminating, etc. legal relations.

Depending on the characteristics of the subjects performing the actions, legal acts in the field of family law may be divided into:

1) acts of private law entities;

2) acts of public law entities (legislative acts, administrative acts, judicial acts (decisions, resolutions, rulings, etc.).

A specific type of lawful actions (acts) that give rise to rights and obligations are administrative acts (management acts) issued by government or local self-government bodies acting as subjects of public law. A management act gives rise to administrative legal relations between the issuing authority and the persons to whom the act is addressed. Other legal relations (e.g., family relations) based on this act take place between the persons to whom this act is addressed. Thus, the decision of the guardianship and trusteeship authority to appoint a guardian gives rise to family (civil) legal relations between the guardian and the ward.

Registration of marriage by the registry office is the basis for the emergence of family legal relations between spouses.

Legislative acts - legal facts - are normative acts that directly provide for the emergence, termination, and transformation of family legal relations.

In cases established by legislative acts, family rights and obligations may arise from a court decision, which is also an act of public law by its nature. A court decision may be one that establishes legal relations (recognition of the right of joint ownership of the actual spouses); one that terminates legal relations (divorce); one that changes legal relations (decision on the forced exchange of residential premises between spouses); one that suspends legal relations (decision on the establishment of a regime of separate residence of spouses); one that restores legal relations (cancellation of a decision to recognize a person as incapacitated), etc.

Another type of lawful actions - legal acts - is characterized as actions that are not specifically aimed at establishing legal consequences, but generate them as a result of a direct indication of the law. They, in turn, can be differentiated depending on the presence of a volitional element in them into:

1) voluntary acts;

2) involuntary acts.

The grounds for the emergence, change, etc. of family legal relations may be volitional legal acts performed by a subject of law if he/she has the will (desire) to act in a certain way, i.e. consciously, but without a special intention to create legal rights and obligations for himself/herself or other persons. At the same time, such conscious, voluntary actions give rise to certain legal relations provided for by the law, regardless of the existence of a corresponding intention to establish them by the person who acted. A characteristic feature of such volitional acts is the intention of a person to act in a certain way, without which the legal relations provided for by the rule of law do not arise. Therefore, only a legally capable person can be a subject of legal relations arising on the basis of voluntary legal acts. An example of volitional legal acts is joint upbringing and maintenance of a

child, which in the event of a dispute may create legal consequences by a court decision regardless of the will of the person who committed them.

The distinction of involuntary legal acts is based on the assumption that the will of the person who committed them does not matter at all: the very fact of committing an act by virtue of a direct prescription of a legal provision entails the emergence of certain legal relations. An example of such an act is when a minor finds something, which may result in certain (primarily civil, and possibly family) rights and obligations for his or her parents.

In the general theory of law, attention was also drawn to the expediency of distinguishing between real legal facts and imaginary legal facts (facts that are assumed, i.e. legal presumptions or facts that are proposed to be assumed by law, i.e. legal fictions). In this case, legal presumptions are defined as assumptions about the presence or absence of certain circumstances (legal facts), which may lead to the emergence, transformation or termination of legal relations. An example is the presumption of paternity of a man who is married to the child's mother (Article 122 of the Family Code), etc. Legal fictions are interpreted as circumstances that do not exist, but can be recognized as existing through the procedure established by law, for example, recognition of paternity by a court decision (Article 128 of the Family Code). Both legal presumptions and legal fictions are probable. However, it is quite common for them to be enshrined in family law as grounds for the emergence of family legal relations, as this pursues the goal of maximizing the protection of the rights and interests of the parties to these legal relations.

When considering the issue of legal facts of family law, it should be borne in mind that due to the possibility of subsidiary application of the Civil Code to the regulation of family relations, the provisions of the latter regarding the grounds for the emergence of civil rights and obligations, in particular, the provisions of Article 11 of the Civil Code, which contains a list of such grounds, should also be taken into account.

It should be emphasized that civil legal relations may arise from actions established by acts of civil legislation, as well as from actions that are not established by these acts but give rise to civil rights and obligations by analogy. This solution is typical for private law. In addition, it is worth emphasizing the important fact that the Civil Code emphasizes the absence of an exhaustive list of grounds for the emergence of civil rights and obligations. In other words, civil rights and obligations arise not only in the presence of expressly defined grounds, but also from other legal facts.

Topic 7. General characteristics of intellectual property rights

1. Concept and essence of intellectual property rights objects

The legal regime of intellectual property is governed by certain provisions of the Constitution of Ukraine, the Civil Code of Ukraine (primarily the provisions of its Book IV, "Intellectual Property Rights"), the Criminal Code, the Customs Code, the Commercial Code, the Code of Ukraine on Administrative Offenses and a number of procedural codes, as well as the provisions of 10 special laws in the field of intellectual property and about 100 bylaws.

Ukraine is a party to 18 multilateral international treaties in this area, which are part of the national legislation.

To date, Ukraine has established a modern legislative framework for the protection of intellectual property rights, which is consistent with internationally recognized approaches to ensuring such protection, in particular with the requirements of the Agreement on Trade-Related Aspects of Intellectual Property Rights (the GKIR8 Agreement) of the World Trade Organization. The implementation of the main provisions of Ukrainian legislation on the protection and enforcement of intellectual property is ensured within the framework of international requirements.

The very concept of "intellectual property" arose in the course of a long practice of legal assignment to certain persons of their rights to the results of intellectual creative activity.

In the broadest sense, “intellectual property” means the rights enshrined in law that are the result of a person's intellectual creative activity. In the commonly used sense, “intellectual property*1 means the rights of a person to the results of human creative activity in the scientific, artistic, industrial and other fields, which are the subject of civil law relations in terms of the right of everyone to own, use and dispose of the results of their intellectual and creative activity.

Intellectual property right is the right of a person to the result of intellectual and creative activity. Therefore, not every intellectual property object can be recognized as an intellectual property object, but only such a result of creative activity that meets the requirements of the law under which legal protection is granted.

Intellectual activity is creative.

Creativity is a purposeful intellectual activity of a person, which results in something qualitatively new, distinguished by its uniqueness, originality and social uniqueness. Creativity is inherent in any human activity: technical, artistic, literary, scientific, industrial, etc. According to its purposefulness, creativity can be divided into two types:

- ♦ spiritual creativity
- ♦ scientific and technical creativity.

All these results of creative activity are united by the concept of “intellectual property”.

The results of creative activity are subject to legal protection in accordance with international and national legislation.

The right to the results of creative activity is guaranteed primarily by the Constitution of Ukraine. Article 41 of the Constitution of Ukraine enshrines the right of everyone to own, use and dispose of their property and the results of their intellectual and creative activity. This right is acquired in the manner prescribed by law. Pursuant to Article 54 of the Constitution of Ukraine, citizens are guaranteed freedom of literary, artistic, scientific and technical creativity, protection of

intellectual property, copyrights, moral and material interests arising from various types of intellectual activity.

Every citizen has the right to the results of his or her intellectual and creative activity, and no one may use or distribute them without the author's consent, except as provided by law.

A person who wishes to become the owner of the relevant intellectual property right and wishes to do so must file an application for registration with the Intellectual Property Institute of Ukraine. Depending on the object of intellectual property right, this may be a certificate or a patent. An authorized representative or patent attorney may file an application on behalf of the applicant.

The application must meet the requirements established for intellectual property rights. The application shall be made in Ukrainian and shall contain certain requirements stipulated by the applicable law.

The application must be accompanied by a document confirming payment of the registration fee. The procedure for payment and the amount of these fees are regulated by the “Regulation on the Procedure for Payment of Fees for Actions Related to the Protection of Intellectual Property Rights” approved by the Cabinet of Ministers of Ukraine on May 22, 2001, No. 543.

The date of filing an application for registration is the date of receipt by the State Intellectual Property Service of Ukraine (formerly the State Department of Intellectual Property) of a properly executed application. In case of non-compliance of the application materials with the established requirements, the applicant is given a term for their elimination from the date of receipt of the notification by the State Intellectual Property Service of Ukraine on their availability. If the application materials are corrected, the date of filing is the date of receipt of the corrected materials by the State Intellectual Property Service of Ukraine. The next stage is the examination of the application, which is carried out within the time limit established for intellectual property rights.

Topic 8: Concept and types of civil law contracts. Conclusion, amendment and termination of the contract

1. The concept and types of civil law contracts.

2. Conclusion, amendment and termination of the contract

1. The concept and types of civil law contracts.

- A contract is an agreement between two or more persons to establish, change or terminate civil rights and obligations. Examples of contracts include sale and purchase, donation, loan, and assignment.
- Modern civil law distinguishes between the following types of contracts:
- - consensual and real contracts are distinguished by the moment of commencement. A consensual contract starts from the moment the parties to the contract enter into a transaction (sale and purchase). A real contract begins when the thing that is the subject of the contract is transferred (a loan does not begin at the time of conclusion, but only when the lender transfers the money to the borrower);
- - depending on the benefit of the counterparties, a distinction is made between paid and gratuitous contracts. If the performance of the contract brings property benefits to both counterparties, the contract is a paid contract (sale and purchase, lease). If the agreement brings property benefits to only one of the counterparties, it is gratuitous (gift). Certain contracts may be either paid or gratuitous at the discretion of the parties;
- - Depending on the distribution of rights and obligations between the parties, unilateral and bilateral contracts are distinguished. In the former, one counterparty has only rights and the other has only obligations. This is the case, for example, with a loan agreement: the lender has the right to demand repayment of the amount lent, and the borrower is obliged to repay it. In a bilateral contract, both counterparties have rights and obligations (a sales contract);

- property and organizational agreements are distinguished by the content of the regulated activity. A property contract is aimed at the direct receipt of property or benefits. Most civil law contracts are of this type. An organizational agreement is intended to create the prerequisites for obtaining property benefits, for example, a joint venture agreement (construction and operation of a building).

A contract is concluded if the parties have duly agreed on all material terms of the contract. Such terms include the terms of the subject matter of the agreement, terms that are defined by law as essential or necessary for agreements of this type, as well as all those terms that must be agreed upon at the request of at least one of the parties.

A contract is concluded by means of an offer by one party to enter into a contract (offer) and acceptance of the offer (acceptance) by the other party. The contract is concluded from the moment the person who sent the offer to enter into the contract receives a response on acceptance of the offer. An exception is made for agreements that require notarization and/or state registration. They are considered concluded from the moment of such certification or registration.

An agreement is considered to be concluded at the place of residence of an individual or at the location of a legal entity that has made an offer to enter into an agreement, unless otherwise provided by the agreement.

An agreement may be amended or terminated only by agreement of the parties, unless otherwise provided by the agreement or law. Thus, a contract may be amended or terminated by a court decision at the request of one of the parties in the event of a material breach of the contract by the other party. The right to unilaterally amend or terminate an agreement may also be provided for in the agreement itself.

2. Conclusion, amendment and termination of the contract

A contract is an agreement between two or more persons to establish, change or terminate civil rights and obligations. Examples of contracts include sale and purchase, donation, loan, and assignment.

Modern civil law distinguishes between the following types of contracts:

- consensual and real contracts are distinguished by the moment of commencement. A consensual contract starts from the moment the parties to the contract enter into a transaction (sale and purchase). A real contract begins when the thing that is the subject of the contract is transferred (a loan does not begin at the time of conclusion, but only when the lender transfers the money to the borrower);

- depending on the benefit of the counterparties, a distinction is made between paid and gratuitous contracts. If the performance of the contract brings property benefits to both counterparties, the contract is a paid contract (sale and purchase, lease). If the agreement brings property benefits to only one of the counterparties, it is gratuitous (gift). Certain contracts may be either paid or gratuitous at the discretion of the parties;

- Depending on the distribution of rights and obligations between the parties, unilateral and bilateral contracts are distinguished. In the former, one counterparty has only rights and the other has only obligations. This is the case, for example, with a loan agreement: the lender has the right to demand repayment of the amount lent, and the borrower is obliged to repay it. In a bilateral contract, both counterparties have rights and obligations (a sales contract);

property and organizational agreements are distinguished by the content of the regulated activity. A property contract is aimed at the direct receipt of property or benefits. Most civil law contracts are of this type. An organizational agreement is intended to create preconditions for entering into an agreement. This follows from Article 638 of the Civil Code of Ukraine, which provides that a contract is considered to be concluded only when the parties have agreed on all its essential terms in a form appropriate for the relevant cases. This means that in the absence of at least one of these conditions, the agreement cannot be considered concluded. At the same time, if an agreement is reached on the essential terms, the agreement comes into force even if it does not contain any other terms. That is why such terms are also called essential terms. The definition of the scope of essential terms depends on the specifics of each particular agreement. For example, the essential

terms of a sale and purchase agreement are the subject matter of the agreement and the price. The subject matter of the contract, the fee for use, and the procedure for using the leased property are essential terms of a lease agreement.

Part 1 of Article 638 of the Civil Code of Ukraine divides essential terms into 4 groups:

1) conditions about the subject matter

2) terms that are defined by law as essential;

3) terms that are necessary for contracts of this type;

4) terms and conditions on which an agreement must be reached at the request of one of the parties.

When determining the essential terms of a particular agreement, it should be borne in mind that the resolution of this issue depends primarily on the essence of the particular agreement. Therefore, it is no coincidence that the Civil Code of Ukraine, when determining the essential terms of a contract, refers to special rules on contractual obligations of this type and calls essential, first of all, those terms that are recognized as such by law and are provided for as mandatory by the very rules of law governing these contractual relations. In particular, this approach was typical for determining the essential terms of the so-called commercial supply and contracting agreements. However, essential terms are not always defined directly in the law.

For example, a sale and purchase agreement is inherently a payment agreement, so the failure to establish such a condition as price by the parties' agreement means that there is no sale and purchase agreement. However, while being essential for a sale and purchase agreement, the price condition is irrelevant for a gift agreement due to the gratuitous nature of the latter.

Either party may consider those terms and conditions that are called essential by law or are necessary for a contract of this type to be insufficient and demand that additional terms and conditions be included in the contract, without which it is not satisfied with the agreement. In this case, such terms also become essential. For example, as a general rule, the delivery of the sold item to a certain

place is not an essential term of sale. However, if the buyer wanted to enter into an agreement only subject to this condition, and the seller does not agree with such a requirement, then such an agreement cannot be considered concluded simply because the parties have agreed on the subject matter, quality and value of the item.

Thus, in order to conclude a contract, it is necessary to reach an agreement on all its essential terms. However, sometimes such an agreement is not enough. In particular, it may also require the transfer of a thing, if it is a real contract (loan, gift). In cases established by law, the agreement must be in the required form. For example, a contract for the sale and purchase of a land plot, a single property complex, a residential building, etc. requires notarization and state registration (Article 657 of the Civil Code of Ukraine). Therefore, everything mentioned above regarding the essential terms of the agreement fully applies to the form of the agreement, since if one of the parties requires or is legally required to notarize the agreement, and the other party evades it, then it is impossible to speak of reaching an agreement in this case.

As for the transfer of things in a real contract, the situation is somewhat different. If the thing is not transferred, there is no contract. But not because no agreement has been reached on its essential terms, but because the requirements of the law have not been met, without which there can be no contract at all.

Topic 9: The concept and subject of notary in Ukraine

1. **The concept and general characteristics of the Notary in Ukraine;**
2. **The concept of a notary and a notary assistant;**
3. **Rights and obligations of a notary;**
4. **Notarial secrecy;**
5. **Guarantees and restrictions on the activities of a notary**

Concept and general characteristics of the special course "Notary in Ukraine"

Notary in Ukraine is a legal institution designed to provide out-of-court protection and defense of the rights and legitimate interests of individuals and legal entities, territorial communities, as well as the state by performing notarial acts within the framework of undisputed legal relations by authorized bodies and officials.

This definition contains all the characteristic features of the notary as a legal institution: extrajudicial protection and defense of rights and legitimate interests, indisputability of legal relations in respect of which notarial acts are performed, performance of notarial acts by authorized bodies and officials, as well as the functions of the notary: protection and defense.

The notary bodies do not use the adversarial form of the process, they establish legal facts, as a rule, on the basis of written evidence. There is no element of publicity in the actions of a notary when performing notarial acts. Thus, the essence of notarial acts is that they are of a certifying and confirming nature, legally enshrining civil rights in order to prevent their possible violation in the future or serve as a means of protecting a right or rights that have already been violated.

Notarial acts are intended to ensure the protection and defense of rights in respect of which there is no dispute, and this is possible only when such acts are performed in accordance with the established rules and law. In the course of notarial acts, mutual rights and obligations arise between the parties to the notarial proceedings, which constitute the main content of procedural legal relations. The rights and obligations of the parties to these relations guarantee both the protection of the rights and legally protected interests of individuals and legal entities in the performance of notarial acts and the fulfillment of notarial functions.

Article 34 of the Law “On Notaries” provides for actions that may be performed in state notary offices. However, this list is not exhaustive, and other notarial acts may be provided for by legislative acts of Ukraine.

Conventionally, all notarial acts can be divided into the following groups:

1) Actions that have the nature of certification or attestation. These include:

- certification of contracts (deeds, marriage contracts, wills, powers of attorney)

- certification of the time of presentation of documents;

- certificate of the fact that the citizen is alive;

- certificate of the fact that a citizen is in a certain place;

- certification of the identity of the citizen with the person depicted in the photograph;

- certification of the authenticity of copies of documents and extracts from them;

- certification of the accuracy of translation of documents from one language into another.

2) Actions of a protective nature. They are as follows:

- taking measures to protect inherited property;

- acceptance of documents for storage;

- acceptance of money and securities for deposit.

3) Actions characterized by the imposition of certain prohibitions:

- imposing a ban on the alienation of a residential house, apartment, cottage, garden house, garage, land plot, or other real estate;

- protest of bills of exchange;

- maritime protest.

4) Actions on issuance of documents:

---issuance of a certificate of inheritance;

---issuance of a certificate of ownership of a share in the marital property;

-issuance of a certificate of purchase of residential buildings at public auction;

-issuance of a certificate of purchase of real estate that was the subject of a mortgage;

-issuing duplicates of documents kept in the notary's files.

As a general rule, notarial acts are performed in the premises of notary offices, except when a citizen cannot appear at this institution for a valid reason, as well as if this is required by the specifics of the transaction to be notarized.

The competence of private notary offices is somewhat different. According to Article 36 of the Law "On Notaries", a private notary performs the same notarial acts as a public notary, except for

- imposing and lifting a ban on the alienation of a residential house, apartment, dacha, garden house, garage, land plot, or other real estate;
- issuing a certificate of ownership of a share in the marital property in the event of the death of one of the spouses;
- issuing a certificate of inheritance;
- taking measures to protect inherited property;
- certification of life care agreements;
- notarization of signatures on documents intended for use abroad and notarization of powers of attorney for this purpose, as well as notarization of signatures of parents or guardians on the consent to adopt a child.

In general, notarial acts are performed after payment on the day of submission of all necessary documents. However, if there is a need to obtain additional documents, information from officials of enterprises, institutions and organizations, and decisions on expert examination, in such cases, notarial acts are postponed until all the circumstances necessary for their performance are fully clarified.

When performing notarial acts, notaries or other persons authorized by law shall establish the identity of a citizen, the degree of his or her legal capacity; the identity of a representative and the limits of his or her powers; and the legal capacity of a legal entity participating in a transaction.

In cases established by law, a notary or other official authorized by law to perform notarial acts may refuse to perform certain notarial acts, in particular, when

- the performance of such an act is contrary to the law;
- the acts are to be performed by another notary or other official;
- a person recognized in court as incapacitated or a representative who does not have the necessary powers has applied for a notarial act;

- a transaction made on behalf of a legal entity contradicts the purposes specified in the charter or regulations of that entity;

- the document submitted to the notary does not comply with the requirements of the law or contains information that discredits the honor and dignity of citizens.

The concept of a notary and a notary assistant

A notary is a natural person authorized by the state to perform notarial activities in a state notary office, state notary archive or independent professional notarial activities, in particular, to certify rights and facts of legal significance and perform other notarial acts provided for by law in order to give them legal validity.

A notary may be a citizen of Ukraine who has a complete higher legal education, speaks the state language, has at least six years of experience in the field of law, including at least three years as an assistant notary or a consultant of a state notary office, has passed a qualification exam and received a certificate of the right to practice notary. A person with a criminal record, limited legal capacity, or who has been declared incapacitated by a court decision may not be a notary.

A notary shall be prohibited from using his or her powers for the purpose of obtaining unlawful benefit or accepting a promise or offer of such benefit for himself or herself or other persons.

A notary may not engage in entrepreneurial or advocacy activities, be a founder of lawyers' associations, hold public office or service in local self-government bodies, be a member of the staff of other legal entities, or perform other paid work, except for teaching, research and creative activities.

The registration file of a private notary is kept and maintained by the Main Department of Justice of the Ministry of Justice of Ukraine in the Autonomous Republic of Crimea, and by the main departments of justice in the regions, cities of Kyiv and Sevastopol, respectively.

A notary's assistant may be a citizen of Ukraine who has a complete higher legal education, speaks the state language, and has at least three years of experience in the field of law. A person with a criminal record, limited legal

capacity, or recognized as incapacitated by a court decision may not be a notary assistant.

A notary assistant may not engage in entrepreneurial or advocacy activities, be a founder of lawyer associations, be in the civil service or service in local self-government bodies, in the staff of other legal entities, or perform other paid work, except for teaching, research and creative activities.

A notary assistant is prohibited from using his or her status for the purpose of obtaining an unlawful benefit or accepting a promise or offer of such benefit for himself or herself or other persons.

On behalf of the notary, the notary assistant participates in the reception of individuals and representatives of legal entities, drafting of deeds, certificates, other documents related to the performance of notarial acts, and statistical reports; make entries in the register for registration of notarial acts, maintain the notary's office and archive, prepare and send requests to enterprises, institutions and organizations on behalf of the notary for information and documents necessary for the performance of notarial acts, and perform other auxiliary and technical work.

A notary assistant is not entitled to sign notarized documents and use the notary's seal.

A notary assistant shall be obliged to perform his or her professional duties in accordance with this Law and the employment contract concluded with a notary; to observe notarial secrecy; to treat documents of notarial record keeping and the notary's archive with care; and to constantly improve his or her professional level.

The selection of candidates and employment of a private notary's assistant is the exclusive right of the notary. An employment contract is concluded with the notary's assistant. A notary may have one assistant.

Rights and obligations of a notary

- A notary shall have the right to:
- - request from enterprises, institutions and organizations information and documents necessary for the performance of notarial acts;

- - receive payment for the provision of additional legal and technical services not related to the notarial acts performed, as well as for the performance of notarial acts by private notaries;
- - drafting agreements and applications, making copies of documents and extracts therefrom, as well as providing explanations on notarial acts and legal advice. Other rights may be granted to a notary by applicable law.
- A notary shall be obliged to:
- - Perform his/her professional duties in accordance with this Law and the oath taken, and comply with the rules of professional ethics;
- - assist citizens, enterprises, institutions and organizations in exercising their rights and protecting their legitimate interests, explain rights and obligations, warn about the consequences of notarial acts so that legal ignorance cannot be used to their detriment
- - keep in secret the information received in connection with the performance of notarial acts;
- - to refuse to perform a notarial act in case of its inconsistency with the legislation of Ukraine or international treaties;
- - keep notarial records and the notary's archive in accordance with the established rules;
- - take care of the notary's documents and the notary's archive, prevent their damage or destruction;
- - to provide documents, information and explanations at the request of the Ministry of Justice of Ukraine, the Main Department of Justice of the Ministry of Justice of Ukraine in the Autonomous Republic of Crimea, the main departments of justice in the regions, cities of Kyiv and Sevastopol in the exercise of their powers to control the organization of activities and compliance with the rules of notarial workflow by notaries;
- - constantly improve their professional level, and in cases stipulated by clause 3 of part one of Article 291 of this Law, undergo advanced training;
- - perform other duties provided for by law.

Notarial secrecy

Notarial secrecy is a set of information obtained in the course of a notarial act or when an interested person applies to a notary, including information about a person, his or her property, personal property and non-property rights and obligations, etc.

A notary and persons referred to in Article 1 of this Law, as well as a notary's assistant, are obliged to keep notarial secrecy, even if their activities are limited to providing legal assistance or familiarization with documents and no notarial act or act equivalent to a notarial act has been performed.

The obligation to maintain notarial secrecy also applies to persons who became aware of notarial acts performed in connection with the performance of their official duties or other work, to persons involved in notarial acts as witnesses, and to other persons who became aware of information that is the subject of notarial secrecy.

Persons guilty of violation of notarial secrecy shall be liable in accordance with the procedure established by law.

Notarial certificates and copies of documents kept by a notary shall be issued by a notary exclusively to individuals and legal entities on whose behalf or in respect of whom notarial acts were performed. In case of death of a person or declaration of death, such certificates are issued to the heirs of the deceased. If a person is recognized as missing, a guardian appointed to protect the property of the missing person has the right to receive certificates of notarial acts if it is necessary to preserve the property over which the guardianship is established.

Notarial certificates and other documents shall be provided by a notary within ten business days upon a substantiated written request of a court, prosecutor's office, bodies conducting operational and investigative activities, pre-trial investigation bodies in connection with criminal proceedings in civil, commercial, administrative cases, cases of administrative offenses under the jurisdiction of these bodies, with the obligatory indication of the case number and attachment of the seal of the relevant body.

Certificates of the amount of notarized agreements required solely to establish compliance with taxation legislation are provided by a notary within 10 business days upon a reasonable written request from the state tax authorities.

An extract from the Inheritance Register confirming the existence of a will is issued only to the testator, and after the testator's death - to any person who has presented a death certificate or other document confirming the death of the testator (one of the testators).

A notary shall not be entitled to testify as a witness regarding information constituting notarial secrecy, unless required to do so by persons on whose behalf or in respect of whom notarial acts were performed.

At the request of the Ministry of Justice of Ukraine, the Main Department of Justice of the Ministry of Justice of Ukraine in the Autonomous Republic of Crimea, main departments of justice in regions, cities of Kyiv and Sevastopol, in order to regulate the organization of notarial activities, notaries shall issue copies of documents and extracts therefrom signed by them, as well as explanations of notaries within the time limit established by these bodies.

Guarantees and restrictions on notary activities

The state guarantees and ensures equal conditions of access for citizens to engage in notarial activities and equal opportunities for notaries in the organization and performance of notarial activities.

Any interference in the activities of a notary, in particular with the aim of preventing him/her from performing his/her duties or inducing him/her to commit illegal acts, including extortion of information constituting notarial secrecy from him/her, his/her assistant, other employees who are in labor relations with the notary, is prohibited and entails liability in accordance with the law.

The search, seizure, and inspection of the workplace (office) shall be carried out on the basis and in accordance with the procedure established by law.

Seizure (withdrawal) of registers of notarial acts and documents transferred to a notary for storage in accordance with the procedure provided for by this Law, as well as the notary's seal, is not allowed. Such registers of notarial acts, documents

or the notary's seal may be submitted to the court upon a reasoned court ruling only for inspection and shall be returned by the court immediately after inspection.

Restrictions on the right to perform notarial acts

A notary and an official of a local self-government body who perform notarial acts may not perform notarial acts in their own name and on their own behalf, in the name and on behalf of their spouse, his or her spouse and their relatives (parents, children, grandchildren, grandparents, brothers, sisters), as well as in the name and on behalf of employees of the notary's office, employees who are in labor relations with a private notary, or employees of the executive committee in question. Officials of local self-government bodies are not entitled to perform notarial acts in the name and on behalf of the executive committee in question. In these cases, notarial acts are performed in any other state notary office, by a private notary, or in the executive committee of another village, town, or city council of people's deputies. Officials listed in Article 40 of this Law are not entitled to certify wills and powers of attorney in their own name and on their behalf, in the name and on behalf of their spouse, his or her spouse and their relatives (parents, children, grandchildren, grandparents, brothers, sisters). Notarial and equivalent acts performed in violation of the rules established by this Article shall be invalid.

Topic 10. Inheritance law

1. Inheritance law and its place in the system of civil law.

2. The concept of inheritance and its types.

3. Inheritance by law and will.

1. Inheritance law and its place in the system of civil law.

Inheritance law occupies a special place in the civil law system. Despite its conservatism, it remains relevant in every state, given its inextricable link to property rights. Inheritance law in some way concerns every person, since at least once in their life, each person becomes an heir and, unfortunately, at the end of their life, is doomed to become a testator.

In the objective sense, inheritance law is a set of civil law rules that govern the posthumous transfer of rights and obligations (inheritance) from a deceased individual (testator) to other individuals (heirs) by way of universal succession.

Inheritance law is considered to be a part of civil law, but the question of its place in the civil law system has been and remains controversial in the legal literature. All researchers of inheritance law come to the conclusion that it is a separate element in the system of civil law, but the nature of this element is defined differently. Thus, some authors consider inheritance law to be a sub-branch of civil law, while others believe that inheritance law is an institute of civil law, and some authors note that inheritance law is both an institute and a sub-branch of civil law.

Determining the place of inheritance law in the civil law system is impossible without clarifying the content of such categories as “institution” and “sub-branch”. In the theory of law, a legal institution is understood as a stable group of legal norms which regulates a certain type of social relations within a branch of law.

Traditionally, the following features of a legal institution are distinguished: 1) homogeneity of actual content. Each institution is designed to regulate an independent, relatively separate group of relations or individual acts, actions of people; 2) legal unity of legal norms. The rules included in the legal institution form a single complex, are expressed in general provisions, legal principles, specific legal concepts, which creates a special legal regime of regulation inherent in this type of relations; 3) normative separation, i.e. separation of the rules creating a legal institution in chapters, sections, other structural parts of a law or other legal act; 4) completeness of relations regulated by this legal institution.

An institution of law contains a set of norms that is designed to ensure the continuity of the relations it regulates. Large and complex branches of law, along with institutions, contain another component - a sub-branch of law. However, unlike a legal institution, a sub-branch of law is not a mandatory component of every branch of law.

A sub-branch of law is a certain grouping of civil law institutions that constitute large concentrations of legal norms, differentiated by the principle of their essence

and content. The very name “sub-branch” etymologically enshrines its peculiar duality - it is no longer an institution, but not yet a branch. When determining the place of inheritance law in the civil law system, it seems fair to qualify it as a sub-branch.

Inheritance law is a set of homogeneous and substantively related civil law institutions that regulate the procedure and conditions for the transfer of property and, in some cases, personal non-property rights and 2 obligations of a deceased person to other persons. Institutions of inheritance law include the institute of inheritance by law, the institute of inheritance by will, the institute of will execution, etc. The peculiarity of inheritance law as a sub-branch of law is determined by the subject matter of regulation within the scope of civil law regulation. In fact, inheritance law has a “sub-subject”.

The subject matter of inheritance law is social relations that arise as a result of a specific legal fact - the death of an individual (declaration of an individual dead) and mediate the transfer of rights and obligations of this person to other persons - heirs.

At the same time, inheritance law also regulates social relations that cannot be classified as inheritance relations by their very nature, such as the making of a will and its revocation. The place of inheritance law in the civil law system is also characterized by its functions. The functions of inheritance law are understood to mean specific areas of legal influence on the relations that are the subject of inheritance law regulation. The functions of inheritance law are intended to address both the general tasks facing civil law in general and the specific tasks facing inheritance.

The legal literature distinguishes the following functions of inheritance: regulatory, protective, educational, incentive, family support and material support. These functions define inheritance law as a relatively independent element of the civil law system.

Inheritance law also has its own intra-industry principles. They constitute the basic principles in accordance with which inheritance law as a system of legal

norms is built, and inheritance law regulation of social relations is carried out. The principles of inheritance law are of an intra-sectoral nature and are based on the general principles of civil law.

The principles of inheritance law include: the principle of universal hereditary succession; the principle of freedom of will; the principle of ensuring the rights and interests of mandatory heirs; the principle of taking into account not only the actual but also the presumed will of the testator; the principle of freedom of choice of heirs called to inherit; the principle of protecting the foundations of law and order and morality, the interests of the testator, heirs, other individuals and legal entities in relation to inheritance; the principle of protecting the inheritance itself from any illegal or immoral encroachments. The relative independence of inheritance law is reflected in the existence of a set of general rules that apply regardless of the type of inheritance and the composition of the inheritance. Among such general rules are the rules that enshrine the concept of inheritance, the opening of the inheritance and the place of its opening, removal from the right to inherit, etc. It should also be emphasized that the rules governing inheritance law are placed in a separate book of the Civil Code of Ukraine (Book 6). The above allows us to qualify inheritance law as a sub-branch of the civil law system.

2. The concept of inheritance and its types.

Pursuant to Article 1216 of the Civil Code of Ukraine, inheritance is the transfer of rights and obligations (inheritance) from a deceased individual (the testator) to other persons (heirs).

The exercise of the right of inheritance allows for the transfer of property belonging to the deceased to other persons. The content of the right of inheritance includes not only the ability to acquire the property of the testator (the ability to inherit), but also the ability for the owner of the property to dispose of it in the event of death (the ability to bequeath).

The subjects of inheritance legal relations are the testator and the heir. A testator is a natural person whose property passes by inheritance to another person or persons after his or her death. Only an individual can be a testator, regardless of

age, gender, health status, etc. An heir is a person who, in the event of the death of an individual, acquires the right to receive his or her inherited property, i.e. has the right to inherit. The heirs by will and by law may be individuals who are alive at the time of the opening of the inheritance, as well as individuals who were conceived during the testator's lifetime and born alive after the opening of the inheritance. Legal entities and other participants in civil relations may also be heirs under a will. The testator's property is transferred to other persons by way of succession. Succession is a form of transfer of rights and obligations from one person (predecessor) to another (successor).

Traditionally, civil law distinguishes two types of succession: universal (full) and singular (partial).

Under universal succession, the entirety of the predecessor's rights and obligations are transferred to the successors, except for those inextricably linked to the person of the predecessor. Singular succession, on the other hand, is the transfer to the successor not of the entire set of rights and obligations of the predecessor, but only of a certain right. Inheritance is considered as universal succession, whereby the entire inheritance (both rights and obligations) is transferred to the heirs at the same time. The inheritance is transferred as a whole, with all the means of security and encumbrances imposed on it. The law does not allow accepting part of the inheritance and refusing to accept the other part.

Acceptance of the inheritance must be unconditional and unreserved. In addition, universal succession in inheritance law is characterized by the feature of immediacy, which is manifested in the fact that the heir receives the inheritance directly from the testator without prior transfer to third parties. The concept of universal succession plays a crucial role in inheritance law. At the same time, it should be noted that the rules of inheritance law regulate only the relations of succession arising from the death of a person.

In the civil law literature, the process of inheritance succession is traditionally divided into two stages: the call to inheritance, which is associated with the emergence of the opportunity for heirs to exercise their subjective right of

inheritance, and acceptance of the inheritance, which is the actual exercise of this right. The first stage is triggered by the death of the testator, and the second stage is triggered by the heirs' actions indicating their acceptance of the inheritance. Succession by inheritance is a unilateral, and therefore free of charge, transfer of the deceased's property to his or her heirs. The transfer of the rights and obligations of the testator to his or her heirs by way of succession is carried out within the framework of an inheritance legal relationship that arises from the death of the predecessor in title and ends with the replacement of the subject matter of the legal relationship, i.e. the transformation of such a relationship. At the same time, hereditary succession is not a legal relationship in itself. Succession, as a one-step transition, is the dynamics of inheritance legal relations, or a manifestation of the latter. Therefore, the concepts of “inheritance legal relationship” and “inheritance succession” are not identical in their content. At the same time, the concept of inheritance, defined in Article 1216 of the Civil Code of Ukraine as the transfer of rights and obligations, would be more consistent with the phenomenon of succession. Upon acceptance of the inheritance, the heir becomes a party to the relations to which the testator was a party. In other words, as a result of hereditary succession, only the subject of legal relations changes.

The only exceptions are legal relations that are inextricably linked to the personality of the testator (Article 1219 of the Civil Code of Ukraine). The inheritance passes to the heirs unchanged, i.e. as it was at the time of the opening of the inheritance. The universality of succession in inheritance is characterized by the fact that the inheritance passes to the heirs immediately from the time of opening the inheritance, regardless of the time of its actual acceptance, as well as the state registration of the heir's right to property, if such a right is subject to state registration. In this case, there is a direct succession, which means a direct transfer of rights and obligations from the testator to the heirs without the participation of a third party in this process. The foregoing allows us to conclude that succession in inheritance is exclusively universal.

Succession by inheritance retains the signs of universality, but the transfer of rights and obligations from the testator to the heirs is not always identical in its content, which is primarily due to the specifics of inheritance legal relations.

For example, in case of inheritance of a jointly owned property to the heirs, the property is transferred to joint fractional ownership, i.e., the type of ownership changes. In addition, pursuant to Part 5 of Article 147 of the Civil Code of Ukraine, a share in the authorized capital of an LLC is transferred to the heir of an individual or the legal successor of a legal entity that is a member of the company, unless the company's charter provides that such a transfer is allowed only with the consent of the other members of the company. In the same case, if the charter of a limited liability company does not contain a provision on the consent of other company members for the transfer of a share by inheritance, then inheritance is carried out on a general basis.

Thus, under certain conditions, the consent of the other members of the company is a necessary basis for the heir to acquire inherited property in the form of a share in the authorized capital of the LLC, in addition to the direct action of accepting the inheritance. The peculiarities of succession in rights in the event of the death of the predecessor exist in intellectual property relations. Thus, the validity period of intellectual property rights to a work is 70 years after the death of the author (Article 446 of the Civil Code of Ukraine), and related rights - 50 years (Article 456 of the Civil Code of Ukraine).

The transfer of property rights and obligations by inheritance is characterized by the following features: 1) inheritance constitutes universal succession, i.e., the testator's property is transferred to the heirs as a whole, including the testator's property rights and obligations; 2) an essential feature of universal succession is the simultaneous transfer to the successor of all rights and obligations that are part of the predecessor's property; 3) the set of rights and obligations that are transferred to the successor is established by the predecessor or the legislator. The composition of these rights and obligations is determined at the time of opening the inheritance. It should be noted that in some cases, the death of an individual and, as

a result, the emergence of certain civil rights and obligations does not give rise to inheritance relations, but to relations of a different kind. For example, the receipt of the sum insured under a life insurance contract concluded by the insured in favor of the beneficiary is not inheritance. In this case, the sum insured is not part of the inheritance, so the right to receive it belongs not to the heir, but to the person specified in the insurance contract.

3. Inheritance by law and will

Inheritance by law historically predates inheritance by will. Accordingly, the former has been at the center of inheritance law for many centuries. The legal significance of the distinction between the types of inheritance is that they determine the order of development of inheritance relations, their specific model - by will or, in the absence of such, by law. At the same time, inheritance under each type is carried out only after the opening of the inheritance.

Testate inheritance occurs when a will is made in the form and manner prescribed by applicable law and the heirs accept the inheritance under the will. Inheritance by law is carried out in the presence of the following grounds: absence of a will; invalidation of a will; removal of heirs under a will from the right to inherit in accordance with Article 1224 of the Civil Code of Ukraine; coverage by a will of only part of the inherited property; refusal of heirs under a will to accept the inheritance (Article 1273 of the Civil Code of Ukraine) and death of an heir under a will before the opening of the inheritance, if the testator did not make a sub-appointment of an heir under a will (Article 1244 of the Civil Code of Ukraine).

The object of inheritance legal relations is the composition of the inheritance, i.e. the rights and obligations that belonged to the testator at the time of opening the inheritance and did not terminate as a result of his death (also called “inherited property” or “inheritance estate”). Objects can be of a property (things, property rights and claims) and non-property nature (copyright to publish and distribute works of science, literature, art and receive remuneration, the right to receive a diploma for a discovery, a copyright certificate or a patent for an

invention, the exclusive right to an invention, industrial design, utility model based on a patent).

The legislator provides for a number of peculiarities of the transfer of property rights of the testator, namely: 5 1) ownership of the land plot is transferred to the heirs on general grounds, while preserving its intended purpose (part 1 of Article 1225 of the Civil Code); 2) the heirs of a residential building, other buildings and structures acquire ownership or the right to use the land plot on which they are located (part 2 of Art. 1225 of the Civil Code); 3) the heirs of a residential building, other buildings and structures acquire the right of ownership or the right to use the land plot necessary for their maintenance, unless otherwise specified in the will (part. 3 of Art. 1225 of the Civil Code); 4) the subject of the right of joint joint ownership has the right to bequeath his/her share in the right of joint joint ownership before its determination and allocation in kind (Art. 1226 of the Civil Code); 5) the amounts of wages, pensions, scholarships, alimony, temporary disability benefits, compensation for injury or other damage to health, and other social benefits that belonged to the testator but were not received by him during his lifetime are transferred to his family members, and in their absence, are included in the inheritance (Article 1227 of the Civil Code); 6) the right to compensation for damages caused to the testator in contractual obligations (part 1 of Article 1230 of the Civil Code); 7) the right to recover a penalty (fine, penalty) in connection with the failure of the testator's debtor to fulfill its contractual obligations, which was awarded by the court to the testator during his lifetime (part 2 of Art. 1230 of the Civil Code); 8) the right to compensation for non-pecuniary damage awarded by the court to the testator during his/her lifetime (Art. 1230(3) of the Civil Code).

The heir also has the following obligations: 1) to compensate for property damage (losses) caused by the testator (Article 1231(1) of the Civil Code); 2) to compensate for moral damages caused by the testator, which was awarded by the court against the testator during his/her lifetime (Article 1231(2) of the Civil Code); 3) to pay a penalty (fine, penalty), which was awarded by the court against the testator's creditor during the testator's lifetime (Article 1231(3) of the Civil

Code). At the same time, property and non-pecuniary damage caused by the testator is reimbursed by the heirs to the extent of the value of the movable or immovable property they inherited. In addition, at the request of the heir, the court may reduce the amount of the penalty (fine, penalty), the amount of compensation for property damage (losses) and non-pecuniary damage if they are excessively large compared to the value of the movable or immovable property inherited.

The legislator also imposes an obligation on the heirs to reimburse: 1) reasonable expenses incurred by one of them or another person for the maintenance, care, treatment and burial of the testator; 2) expenses for the maintenance, care, treatment of the testator, which may be recovered no more than 3 years before his or her death. Moreover, the heirs cannot accept only the rights and refuse to accept the obligations, since the inheritance is accepted not in part but in whole.

Pursuant to Article 1219 of the Civil Code, the inheritance does not include rights and obligations that are inextricably linked to the personality of the testator, in particular: 1) personal non-property rights; 2) the right to participate in companies and the right to membership in associations of citizens, unless otherwise provided by law or their constituent documents; 3) the right to compensation for damage caused by injury or other damage to health; 4) the right to alimony, pension, allowance or other payments established by law; 5) fiduciary (personal) rights and obligations of a person as a creditor or debtor, which are terminated by the death of one of them.

Thus, the above types of inheritance are only in a generalized sense, since inheritance does not arise directly from the law. In order to inherit not only by will but also by law, a certain set of legal facts is required. Thus, in the case of inheritance by law, there must be at least three such facts: the person called to inherit must be a member of the circle of heirs of the respective line; opening of the inheritance; acceptance of the inheritance.

The division of inheritance set forth in Article 1217 of the Civil Code of Ukraine is somewhat conditional, as inheritance by will is also regulated by law,

but when determining the circle of heirs, distributing inherited property among them, and establishing other testamentary instructions, priority is given to the will of an individual expressed in the form prescribed by law. The law does not prohibit the inheritance of one part of the inheritance by law and the other part by will. Such inheritance occurs if the will covers only a part of the inherited property or if the will is partially invalidated. The refusal of a testamentary heir to accept the inheritance does not deprive him of the right to inherit by law (Article 1275 of the Civil Code of Ukraine). Some authors refer to simultaneous inheritance by law and by will as “mixed inheritance”.

Topic 11: Civil procedural law.

1. Concept, subject of Civil Procedure Law

2. The concept and system of principles of civil procedural law

3. Basic principles in civil procedure

1. Concept, subject of Civil Procedure Law

The structure of law is usually divided into 2 major blocks: substantive law and procedural law. Within these blocks, substantive or procedural branches of law are traditionally distinguished.

When defining the concept of civil procedural law, we should recall the traditional understanding of a branch of law as an organic set of rules that regulate certain relations using a certain method. Based on this methodological reference, a significant number of legal scholars distinguish branches of law by the subject matter and method of legal regulation.

Civil procedural law is also characterized by its subject matter and method of legal regulation.

The subject matter of civil procedure in a very simplified form can be defined as a set of social relations arising in connection with the consideration of civil disputes and regulated by the rules of civil procedure law. However, this issue

requires a more detailed study due to the fact that in the science of civil procedure law, civil procedure is understood in both broad and narrow meanings.

The concept of “civil procedure” is considered in several aspects. Firstly, it is defined by the rules of civil procedure law as a permanent movement of a case that has arisen between the persons specified by the Code of Civil Procedure. Secondly, as a form of court activity established by the rules of civil procedure law aimed at protecting disputed or violated rights.

In view of this, the subject matter of civil procedural law is social relations arising in the field of civil proceedings, i.e. civil procedural relations. These relations arise as a result of the activities of the court, persons involved in the case, and the enforcement authorities, which are carried out in accordance with the rules of civil procedural law.

Civil procedural law is a set of rules and principles that establish the procedure for consideration and resolution of civil cases in the administration of justice in courts. These procedural rules fully regulate all procedural actions and activities of participants in civil proceedings.

Unlike the subject matter of civil procedural law, the subject matter of civil procedure coincides with the subject matter of judicial defense. Thus, civil procedure is understood primarily as the procedure for judicial consideration and resolution of civil cases established by the rules of civil procedure law.

The subject matter of civil proceedings is a disputed (or legally uncertain) substantive legal relationship.

Civil procedure (legal proceedings) is a procedure regulated by the rules of civil procedural law that mediates the protection of civil rights and legitimate interests of subjects, through which the rules of substantive law are implemented.

Civil proceedings are conducted in a certain procedural form, which is determined by law. The civil procedural form is of great importance in establishing a certain standard of jurisdiction, which, on the one hand, provides certain guarantees of the lawful resolution of the case, and, on the other hand, creates

conditions for the court to correctly apply substantive and procedural rules, and therefore to make a reasonable and lawful decision in the case.

The civil procedural form is a system of rules established by the civil procedural law that govern the procedure for conducting civil proceedings, as well as the procedure for the activities of each of the participants in civil proceedings, which is carried out to protect the rights and legitimate interests.

The civil procedural form is characterized by the following features: proceedings, stages and procedural regime.

Proceedings are a system of civil procedural actions united by the ultimate procedural goal.

Type of civil proceedings is the procedure for consideration of civil cases provided for by law and combined into certain groups in the court of first instance, which is determined by the substantive nature of the cases included in this group. The type of proceedings is characterized by independent means and methods of protecting rights and interests, as well as certain features of the court procedure arising from this.

The Code of Civil Procedure establishes a special subject of judicial activity in each type of proceedings. There are 3 types of such proceedings: action proceedings, writ proceedings, and special proceedings.

The action proceedings are the main proceedings of civil proceedings, the legal nature of which is determined by the peculiarities of the relevant substantive legal relations characterized by equality of subjects. Any party to these legal relations who considers the behavior of another party to be unlawful may apply to the court to protect their rights and interests or to take measures under the Code of Civil Procedure aimed at preventing offenses.

The writ proceedings, unlike the action proceedings, are simplified and abbreviated proceedings in the court of first instance, are based on reliable written evidence, aim to protect rights and legitimate interests by ensuring the possibility of enforcing a number of obligations and are conditioned by the legal nature of the

substantive legal requirements specified in the law, which may be subject to a court order.

A court order is a special form of court decision issued by a court upon consideration of the requirements set forth in Article 96 of the Code of Civil Procedure.

Special proceedings are a type of non-action civil proceedings in which civil cases are considered to confirm the presence or absence of legal facts that are important for the protection of the rights and interests of a person or the creation of conditions for the exercise of personal non-property or property rights, confirmation of the presence or absence of indisputable rights (part 1 of Article 234 of the Code of Civil Procedure).

Special proceedings are an independent type of civil proceedings in which the court, when considering indisputable cases, establishes legal facts or circumstances in order to protect the legally protected interests of individuals and legal entities.

Civil proceedings, as a specific procedure established by law for judicial consideration of civil cases, consist of several successive stages.

Stages of civil proceedings are constituent parts of a single civil proceeding (judicial proceedings) characterized by the commonality of the immediate procedural goal, having specific content and appropriate procedural design.

Each stage is characterized by a certain set of procedural actions, the beginning and end of the stage is formalized by a relevant procedural document.

The following stages of civil proceedings are distinguished:

1) initiation of a civil case in court;

2) proceedings in the case before the trial;

3) consideration of the case on the merits in the court of first instance;

4) proceedings in the appellate instance;

5) proceedings in the cassation instance;

6) consideration of the case by the Supreme Court of Ukraine;

7) proceedings in connection with newly discovered circumstances;

8) enforcement proceedings.

The procedural regime is the degree of regulation of the procedure. Depending on the procedural regime, civil procedural, commercial procedural and other procedural forms are distinguished.

Civil procedural rules form a system characterized by internal unity, as well as a common subject matter and method of legal regulation.

The system of civil procedural law is a set of civil procedural rules governing civil proceedings and united by the subject matter of legal regulation.

The system of civil procedural law consists of 2 parts: General and Special.

The general part of civil procedural law includes rules that are decisive and fundamental for the entire field of civil procedural law and that establish the following: the objectives of civil proceedings, the right to apply to court for judicial protection, the composition of participants, the system of protection of their procedural rights, the competence of the court, the basic principles of civil procedural law, the composition of the court, the procedure for opening proceedings in a case, proceedings before trial, the procedure for resolving issues by the court, the concept and types of evidence, court terms, etc.

The special part of civil procedural law combines the rules governing proceedings in the court of first instance, review of court decisions and rulings on appeal and cassation, as well as review of court decisions due to newly discovered circumstances and by the Supreme Court of Ukraine, enforcement of court decisions, judicial control, etc.

Since the concept of civil proceedings is closely related to the right to defense, this right is enshrined in Article Z of the Code of Civil Procedure, according to which every person has the right to apply to the court for protection of his or her violated, unrecognized or disputed rights, freedoms or interests in accordance with the procedure established by law. Since the right to judicial protection is enshrined in the Constitution, it is constitutional and therefore absolute. Judicial protection is the realization of a right of a public law nature.

2. The concept and system of principles of civil procedural law

Each branch of law is characterized by a certain set of principles. The significance of legal principles, in particular sectoral principles, is that they, firstly, reflect the essence of the content, social orientation and main sectoral features of legal regulation; secondly, they should be taken into account when identifying gaps in legislation and applying legal norms by analogy.

The principles of civil procedure are important because they are a prerequisite for improving the activities of the judiciary, and their strict observance and implementation is an important guarantee of protection of the rights, freedoms and interests of individuals. The principles of civil procedure concentrate the legislator's views on the nature and content of modern legal proceedings regarding the consideration and resolution of civil cases by courts.

The principles of civil procedure are objective in their content. They are determined by the social circumstances that exist in society.

The principles of civil procedure can be defined from 2 perspectives. First, as historical categories developed over the course of the long development of the process, as an element of human culture. Secondly, as ideas enshrined in the rules of civil procedure law and having a normative character. In view of this, the principles of civil procedure are the defining ideas, the principles according to which the relations arising in the field of legal proceedings are regulated, and which express the tasks of justice in civil cases and characterize the methods of their implementation.

The principles of civil procedural law are expressed both in certain general rules and in a number of procedural rules that contain guarantees for the implementation of general legal provisions in practice.

The principles of civil proceedings are of a normative nature, i.e., they are enshrined in the rules of law. In recent years, the traditional Soviet principles have undergone significant quantitative and qualitative changes in the course of discussion and development of codified acts.

Most of the principles of civil proceedings are enshrined in the Constitution, the Law on the Judiciary and the Status of Judges, and the Code of Civil Procedure.

Traditionally, the principles of civil, commercial, criminal and administrative proceedings are classified according to the sources of their regulatory support into the following: 1) principles enshrined in the Constitution; 2) principles enshrined in the legislation on the judiciary.

The principles of civil procedure enshrined in the Constitution include the following: administration of justice exclusively by courts; election and appointment of judges; administration of justice by a judge alone or by a panel of judges; independence and immunity of judges and their subordination only to the law; legality; equality of all participants in the process before the law and the court; adversarial nature of the parties and freedom to present their evidence and prove their conviction before the court; publicity of the trial and its full recording by technical means; the state language of the judicial process; ensuring appeal and cassation of court decisions, except in cases established by law; adoption by courts of decisions in the name of Ukraine and their binding effect throughout Ukraine; accessibility and guarantee of judicial protection of human and civil rights and freedoms; public participation in the protection of citizens' rights; publicity; inviolability of the person; inviolability of the home; secrecy of correspondence, telephone conversations, telegraph and other correspondence; protection of personal and family life of citizens.

The principles of civil procedure enshrined in the legislation on judicial proceedings include: dispositivity, procedural equality of the parties, rational procedural form, impossibility of procedural concurrency, oral procedure, and directness.

The principles of civil procedure are also classified depending on the scope of their application into:

- general legal principles that are inherent in all branches of law, for example, legality, democracy;

- inter-branch principles are the principles of civil procedural law, commercial procedural law, administrative procedural law: a) administration of justice only by a court; b) independence of judges and their subordination only to the law; c)

equality of all participants in the process before the law and the court; d) combination of collegial and sole composition of the court in the consideration of cases; e) publicity and other principles;

- sectoral principles - inherent only in civil procedural law (they usually include the principles of discretion, procedural equality of the parties, but these principles also apply to administrative proceedings, so they are rather inter-branch principles).

Since there are no exclusively sectoral principles inherent only in civil procedure, the principles of discretion, procedural equality of the parties and adversariality will be considered within the framework of inter-sectoral principles.

3. Basic principles in civil proceedings

The general legal principles affecting civil proceedings include the principles of the rule of law; humanism; legality; justice; and democracy.

One of the basic principles of the rule of law is the rule of law. According to Article H of the Constitution, human rights and freedoms and their guarantees determine the content and direction of the state's activities. The state is accountable to the individual for its activities. Affirming and ensuring human rights and freedoms is the main duty of the state.

The principle of the rule of law is new to national legal practice. By enshrining the principle of the rule of law, the Constitution proclaimed the transition from the past ideology of “state domination” over the individual to a new ideology of “state service” to the interests of the individual.

The principle of the rule of law is a principle of natural law as a set of ideal, spiritual and just concepts of law. Justice, goodness, and humanism as components of the rule of law are moral categories, elements of public consciousness.

When deciding a case, the court is guided by the rule of law, according to which a person, his or her rights and freedoms are recognized as the highest values and determine the content and direction of the state's activities.

The principle of humanism means that the court should direct its activities to the proper protection of human rights, freedoms and interests, as well as the

personality. According to Article H of the Constitution of Ukraine, a person, his or her life and health, honor and dignity, inviolability and security are recognized in Ukraine as the highest social value.

The principle of humanism is also embodied in Article 1 of the Civil Procedure Code, which provides that the task of civil proceedings is to consider and resolve civil cases in a fair, impartial and timely manner in order to protect violated, unrecognized or disputed rights, freedoms or interests of individuals, rights and interests of legal entities, and the interests of the state.

The principle of justice is close to the principle of humanism. Justice requires that actions and their social consequences are consistent. It is believed that the principle of justice is crucial for private law and affects the method of its regulation.

The principle of justice is of particular importance. It expresses the general social essence of law, the desire to find a compromise between the parties to legal relations, between an individual and society, a citizen and the state. The principle of fairness requires that justice be administered on a lawful and fair basis.

The principle of legality is the most important principle of law, which is one of the main criteria for determining the quality and efficiency of legal proceedings, including civil proceedings.

Judges are subject only to the law in the administration of justice (Article 129 of the Constitution). The main principles of judicial proceedings are legality (Article 129(1)(h) of the Constitution). Citizens are obliged to strictly observe the Constitution and laws of Ukraine, not to infringe on the rights and freedoms, honor and dignity of other people (Article 68(1) of the Constitution).

The principle of legality is embodied in the fact that the court decides cases on the basis of the Constitution and laws of Ukraine, as well as international treaties ratified by the Verkhovna Rada of Ukraine.

In accordance with the resolution of the Plenum of the Supreme Court of Ukraine “On the Application of the Constitution of Ukraine in the Administration of Justice”, courts in considering specific cases must assess the content of any law

or other legal act in terms of compliance with the Constitution and, in all necessary cases, apply the Constitution as an act of direct effect.

In the absence of a law governing the relevant legal relations, the court applies the law governing similar legal relations (analogy of law), and in the absence of such a law, the court proceeds from constitutional principles and general principles of law (analogy of law).

The principle of democracy is manifested in the fact that all people are free and equal in their dignity and rights. All citizens are equal before the law regardless of race, skin color, political, religious or other beliefs, gender, ethnic or social origin, property status, place of residence, language or other characteristics (Article 24 of the Constitution). Foreigners also have equal rights, freedoms and obligations with Ukrainian citizens, with the exceptions established by the Constitution, laws or international treaties of Ukraine (Article 26 of the Constitution).

Interdisciplinary principles inherent in justice in general

The principles of justice are the following: administration of justice exclusively by courts; independence of judges and their subordination only to the law; administration of justice on the basis of respect for honor and dignity, equality before the law and court; conduct of court proceedings in the state language; publicity and openness of court proceedings; competition; ensuring appeal and cassation of court decisions; binding nature of court decisions.

The cross-sectoral principles also include the principles of: discretion: procedural equality of the parties.

Administration of justice exclusively by courts

According to Article 124 of the Constitution, Articles 15, 107 of the Civil Procedure Code and Article 5 of the Law “On the Judicial System and Status of Judges”, justice in Ukraine is administered exclusively by courts. The jurisdiction of the courts extends to all legal relations arising in the state and society. All social relations regulated by the law may be subject to judicial review in the event of a dispute.

The principle of independence of judges and their subordination only to the law

According to Article 6 of the Law "On the Judicial System and Status of Judges", courts administer justice independently. In administering justice, courts are independent of any unlawful influence.

Interference in the administration of justice, influence on the court or judges in any way, disrespect for the court or judges, collection, storage, use and dissemination of information orally, in writing or in any other way with the aim of damaging the authority of judges or influencing the impartiality of the court is prohibited and entails liability established by law.

State authorities, local self-government bodies, their officials and employees, as well as individuals and legal entities and their associations, are obliged to respect the independence of a judge and not to encroach on it. When adopting new laws or amending existing laws, it is not allowed to narrow the content and scope of the guarantees of judicial independence defined by the Constitution.

Equality of all participants in civil proceedings before the law and the court

The equality of all participants before the law and the court is enshrined in clause 2, part H, Article 129 of the Constitution. According to Article 24 of the Constitution, there can be no privileges or restrictions on the rights of participants in civil proceedings based on race, skin color, political, religious or other beliefs, gender, ethnic and social origin, property status, place of residence, language or other characteristics.

The principle of equality includes the following principles: 1) equality of all participants in the process (including civil proceedings) before the law and the court; 2) adversarial nature of the parties.

The principle of equality in civil proceedings is divided into 2 components - equality before the law and equality before the court, which emphasizes the duality of relations that take place in civil proceedings, namely, the substantive relations

that exist between the parties to civil proceedings and the procedural relations that exist between the parties and the court.

This principle provides for an equal opportunity for all persons to participate in court proceedings, to have a civil procedural status as defined by the Code of Civil Procedure, and to exercise the rights and obligations enshrined in the procedural law.

The principle of procedural equality, which is a manifestation of the principle of equality of citizens before the law and court, is close to the principle of equality of all participants to civil proceedings before the law and court.

Sometimes in the procedural literature it is emphasized that the existence of the principle of procedural equality of the parties and its enshrining in the rules of civil procedure law is due not only to the manifestation of the general legal principle of equality of citizens before the law and court in the administration of justice in civil cases, but also to the independence and equal position of subjects in civil, family and other private legal relations which are the subject of judicial activity in civil proceedings. However, the principle of procedural equality of the parties is a mandatory basis for consideration of any civil dispute in court. Participants in civil procedural legal relations are endowed with equal opportunities to defend the legitimacy of their position.

By its legal nature, the principle of procedural equality is a legally enshrined guarantee of a fair trial. In addition, it is one of the manifestations of the general legal principle of the rule of law: parties to civil proceedings know what procedural rights they and their procedural opponents have.

2. Seminar materials for the discipline “Legal regulation of the industry”

12. Seminar materials for the discipline “Legal regulation of the industry”

Seminar session 1. Regulatory and legal regulation of hotel, restaurant and tourism business enterprises

Objective: to study the regulatory and legal regulation of business entities in the field of hotel, restaurant and tourism business as an important administrative lever of state regulation.

Tasks: analysis of questions for self-study on the topic, as well as solving practical situational tasks to enable the teacher to determine the level of student learning. The list of individual tasks to be performed can be found below.

Methodological recommendations: oral questioning - includes questioning on any issue presented at the seminar (at the teacher's discretion), answering students' questions, students' questions to other students, answers of other students, answering questions for repetition (on what was studied earlier), answers to control questions on the topic of the seminar.

The student must provide: the correct answer to the question, a complete and specific answer, use scientific and regulatory sources, be able to link theory to practice, maintain logic and reasoning in the presentation of thoughts, and culture of speech.

Questions to be worked on in pairs and groups. Students have the opportunity to work in static pairs (2 people at one desk) or dynamic pairs (small groups of up to 4 people). Assessment of such work is equal to individual work.

Tasks: analysis of questions for self-study on the topic, as well as solving practical situational tasks to enable the teacher to determine the level of student learning. The list of individual tasks to be completed can be found below.

List of issues to be discussed:

1. Provide a list of laws of Ukraine that regulate the main aspects of economic activity of hotel, restaurant and tourism businesses.
2. What is the main body of the system of central executive authorities that ensures the formation and implementation of state policy in the field of hospitality? Its powers.

3. What resolutions of the Cabinet of Ministers of Ukraine regulating the activities of hotel, restaurant and tourism business do you know?

4. Name the national standards of Ukraine in the field of hospitality.

5. What regulations in the field of hospitality you know?

6. The importance of legal regulation of the hospitality industry.

An independent task:

The independent task is for the student to independently open a regulatory act on the Internet and determine its importance in regulating the hospitality industry:

- On ensuring sanitary and epidemic welfare of the population: Law of Ukraine of 24.02.1994 № 4004-XII. URL: https://zakon.rada.gov.ua/go/4004-12.

- On Approval of the Requirements for the Development, Implementation and Application of Permanent Procedures Based on the Principles of the Food Safety Management System (HACCP): Order of the Ministry of Agrarian Policy of Ukraine dated 01.10.2012 No. 590. URL: https://bit.ly/2R3JNhS.

- On Approval of the Procedure for Establishing Categories for Hotels and Other Facilities Intended to Provide Temporary Accommodation Services: Resolution of the Cabinet of Ministers of Ukraine dated 29.07.2009 No. 803. URL: https://zakon.rada.gov.ua/go/803-2009-%D0%BF.

- On Approval of the Procedure for Providing Information to Consumers on the Type of Tourist Infrastructure Object and its Category: Resolution of the Cabinet of Ministers of Ukraine of 03.07.2013 No. 470. URL: https://bit.ly/3tsSGP7.

- On Approval of the Procedure for Providing Temporary Accommodation Services: Resolution of the Cabinet of Ministers of Ukraine of 15.03.2006 No. 297. URL: https://zakon.rada.gov.ua/go/297-2006-%D0%BF.

- On Approval of the Rules for the Use of Hotels and Similar Accommodation Facilities and Provision of Hotel Services: Order of the State Tourism Administration of Ukraine of 16.03.2004 No. 19. URL: https://bit.ly/3tvl3w4.

- On Approval of the Recommended Norms for Technical Equipment of Public Catering Facilities: Order of the Ministry of Economy, European Integration of 03.01.2003 No. 2. URL: https://zakon.rada.gov.ua/go/v0002569-03

- On Protection of Consumer Rights: Law of Ukraine of 12.05.1991 № 1023-XII. URL: https://zakon.rada.gov.ua/go/1023-12.

- On resorts: Law of Ukraine of 05.10.2000 No. 2026-III. URL: https://zakon.rada.gov.ua/go/2026-14.

- On basic principles and requirements for food safety and quality: Law of Ukraine of 23.12.1997 No. 771/97-BP. URL: https://bit.ly/3uvRiwz.

- On Standardization: Law of Ukraine of 05.06.2014 No. 1315-VII. URL: https://zakon.rada.gov.ua/go/1315-18.

- On Technical Regulations and Conformity Assessment: Law of Ukraine of 15.01.2015 No. 124-VIII: https://zakon.rada.gov.ua/go/124-19.

- On Tourism: Law of Ukraine of 15.09.1995 № 324/95-BP. URL: https://zakon.rada.gov.ua/go/324/95-%D0%B2%D1%80.

- Register of certificates on establishing categories for hotels and other facilities intended for the provision of temporary accommodation services issued by the Ministry of Economic Development and Trade. URL: https://bit.ly/3uvdw1J.

- Sanitary rules for public catering enterprises, including confectionery shops and enterprises producing soft ice cream (SanPin 42-123-5777-91) of 19.03.1991. URL: https://bit.ly/3euUWRV.

Form of submission

1. Oral survey (control questions)
2. Written survey (open-ended and multiple-choice tests)

Seminar session 2. Application of labor law in the hotel and restaurant business

Goal: to study the labor legislation applicable to the hotel, restaurant and tourism business as an important administrative lever of state regulation.

Tasks: analysis of questions for self-study on the topic, as well as solving practical situational tasks to enable the teacher to determine the level of student learning. The list of individual tasks to be performed can be found below.

Methodological recommendations: oral questioning - includes questioning on any issue presented at the seminar (at the teacher's discretion), answering students' questions, students' questions to other students, answers of other students, answering questions for repetition (on what was studied earlier), answers to control questions on the topic of the seminar.

The student must provide: the correct answer to the question, a complete and specific answer, use scientific and regulatory sources, be able to link theory to practice, maintain logic and reasoning in the presentation of thoughts, and culture of speech.

Questions to be worked on in pairs and groups. Students have the opportunity to work in static pairs (2 people at one desk) or dynamic pairs (small groups of up to 4 people). Assessment of such work is equal to individual work.

Tasks: analysis of questions for self-study on the topic, as well as solving practical situational tasks to enable the teacher to determine the level of student learning. The list of individual tasks to be performed can be found below.

Seminar session 3: Legal liability

Goal: to study the concept of legal liability, its types, which is applied in the field of hotel, restaurant and tourism business.

Tasks: analysis of questions for self-study on the topic, as well as solving practical situational tasks to enable the teacher to determine the level of student learning. The list of individual tasks to be performed can be found below.

Methodological recommendations: oral questioning - includes questioning on any issue presented at the seminar (at the teacher's discretion), answering students' questions, students' questions to other students, answers of other students,

answering questions for repetition (on what was studied earlier), answers to control questions on the topic of the seminar.

The student must provide: the correct answer to the question, a complete and specific answer, use scientific and regulatory sources, be able to link theory to practice, maintain logic and reasoning in the presentation of thoughts, and maintain a culture of speech.

Questions to be worked on in pairs and groups. Students have the opportunity to work in static pairs (2 people at one desk) or dynamic pairs (small groups of up to 4 people). Assessment of such student work is equal to individual work.

Tasks: analysis of questions for self-study on the topic, as well as solving practical situational tasks to enable the teacher to determine the level of student learning. With a list of individual tasks

Independent task:

An independent task is for the student to independently study the circumstances that exclude legal liability.

Seminar session 4. Administrative liability

Goal: to study the concept of administrative liability, its types, which is applied in the field of hotel, restaurant and tourism business.

Tasks: analysis of questions for self-study on the topic, as well as solving practical situational tasks to enable the teacher to determine the level of student learning. The list of individual tasks to be performed can be found below.

Methodological recommendations: oral questioning - includes questioning on any issue presented at the seminar (at the teacher's discretion), answering students' questions, students' questions to other students, answers of other students,

answering questions for repetition (on what was studied earlier), answers to control questions on the topic of the seminar.

The student must provide: the correct answer to the question, a complete and specific answer, use scientific and regulatory sources, be able to link theory to practice, maintain logic and reasoning in the presentation of thoughts, and maintain a culture of speech.

Questions to be worked on in pairs and groups. Students have the opportunity to work in static pairs (2 people at one desk) or dynamic pairs (small groups of up to 4 people). Assessment of such student work is equal to individual work.

Tasks: analysis of questions for self-study on the topic, as well as solving practical situational tasks to enable the teacher to determine the level of student learning. The list of individual tasks to be performed can be found below.

List of issues to be discussed:

1. The concept of administrative penalties.
2. Types of administrative penalties.
3. General rules for imposing administrative penalties.

Independent task:

The independent task is for the student to independently study the circumstances that mitigate and aggravate administrative responsibility

Seminar task 5. Criminal liability in the industry

Goal: to study the concept of criminal liability, its types, which is applied in the field of hotel, restaurant and tourism business.

Tasks: analysis of questions for self-study on the topic, as well as solving practical situational tasks to enable the teacher to determine the level of mastery of the material by students. The list of individual tasks to be performed can be found below.

Methodological recommendations: oral questioning - includes questioning on any issue presented in the seminar (at the teacher's discretion), answering students' questions, students' questions to other students, answers of other students, answering questions for repetition (on what was studied earlier), answers to control questions on the topic of the seminar.

The student must provide: a correct answer to the question, a complete and specific answer, use scientific and regulatory sources, be able to link theory to practice, maintain logic and reasoning in the presentation of thoughts, and culture of speech.

Tasks: analysis of questions for self-study on the topic, as well as solving practical situational tasks to enable the teacher to determine the level of student learning. The list of individual tasks to be performed can be found below.

List of issues to be discussed:

1. The concept of criminal law.
2. Methods and functions of criminal law.
3. The system of criminal law.

Independent task:

The independent task is for the student to write a commentary on Article 271 - Violation of the requirements of labor protection legislation.

1. Violation of the requirements of legislative and other regulatory legal acts on labor protection by an official of an enterprise, institution, organization or citizen - a business entity, if this violation caused damage to the health of the victim, is punishable by a fine of one thousand to three thousand tax-free minimum incomes, or correctional labor for up to two years, or restraint of liberty for the same period.

2. The same act, if it caused death or other grave consequences, shall be punishable by correctional labor for up to two years, or restraint of liberty for up to five years, or imprisonment for up to seven years, with or without disqualification to hold certain positions or engage in certain activities for up to two years.

Tasks: Solve the problem

Task 1.

Determine in each of the following situations the types of legal liability to which a person may be brought for the offense committed.

Situation 1: Through the fault of the school principal, there were significant violations of fire safety rules in the school.

Situation 2. Kindrat committed petty theft at work.

Situation 3: Wilhelm set fire to the car of his business competitor.

Situation 4. Volodymyr, who worked as a driver at a dairy plant, transporting the company's products, exceeded the speed limit and hit a pedestrian, killing him. As a result, the company's vehicle was damaged and some of its products were lost.

Problem 2. In the morning of April 19, 2019, 19-year-old Pavel read the news on the Internet before breakfast, and after breakfast, at the request of his parents, he took out the trash in the trash can. At 9 a.m., he bought two loaves of bread at the store, and from 10 to 11 a.m., he swam in the pool, paying 60 UAH. At 11.45 a.m., he crossed the street at a red light and paid a fine on the spot. At 15:15, Pavlo received a message that he had been hired after an interview. At 4 p.m., he helped his neighbor carry the food she had bought to her fifth-floor apartment. At 17.45, while driving a car, he exceeded the speed limit, lost control and hit a pedestrian who was crossing the street on a pedestrian crossing at that time. The victim sustained moderate injuries. In what cases did Pavel enter into legal relations on April 19, 2019? What branches of law regulate these legal relations?

Task 3. Indicate in which of the following situations there were circumstances that exclude legal liability, and which ones. Briefly justify your answer.

Situation 1: Vladimir, who was returning home from a gaming club, was attacked by a dog of a fighting breed. In order to avoid dangerous dog bites, Vladimir killed the dog with a baseball bat he had with him.

Situation 2: Peter, who had been in a very hostile relationship with Paul for many years, once again saw the latter on the street and set his Caucasian shepherd dog on him. Out of fright, Pavlo grabbed a piece of rebar that was lying on the

ground (he was passing by a new building) and broke the dog's spine. The dog died a few hours later.

Situation 3: Danylo, a slinger, hooked a load that was 1.5 times the maximum permissible weight to the hook of a crane. He did this to speed up the construction work. The cable could not withstand the load and broke. Another worker was seriously injured.

Situation 4. Tax inspector Serafim, during a routine inspection of a company, discovered non-payment of taxes in the amount of more than UAH 60 thousand and drew up a report on this. However, after being threatened that if he handed over the report to law enforcement, his wife would be provided with material evidence of his infidelity, Serafim destroyed the report.

Situation 5. Police investigator Maksym ordered the cleaner Halyna to throw a folder of papers containing material evidence in one of the crimes into the trash.

Situation 6. Nikifor, who did not know how to swim, was traveling on the water in a one-man boat. After a while, Nicanor, exhausted from swimming, approached him and asked to get into the boat. Nikephoros refused him. Then Nicanor tried to get into the boat. In order to prevent this, and thus not to go to the bottom, Nikephoros hit Nikanor with his oar, which killed him.

Situation 7. Two masked men broke into a school building. They tied the security guard to the door and took five computers from the school.

Situation 8. Vasyl threatened the cashier Marta with a knife and forced her to give him 20 thousand UAH.

Situation 9. Maksym, who lived on the ninth floor of an apartment building, went out to the balcony to get some fresh air. Looking down, he saw two men pushing his motorcycle. Maksym called out to them and demanded that they stop stealing the bike, but they either did not hear him or did not want to respond to his cry. Irritated, Maksym threw a metal bucket at the men. When Maksym ran out into the yard of the house, it turned out that one of the men had been killed by the bucket that fell on him. In addition, no one was going to steal the motorcycle, they

just wanted to take it aside to get as close as possible to the door of the entrance with the truck that brought the furniture.

Situation 10. After committing a robbery of Orysia and taking away 2 thousand UAH worth of gold jewelry, Orest tried to escape. But Zynoviy rushed after him and knocked him down to stop the attacker. As a result, Orest's right leg received a bruise.

Form of submission

1. Oral interview (control questions).

2. Written solution of the tasks.

Tasks: Solve the problem

TASK 1

P. was singing loudly on board an airplane flying from Donetsk to Lviv. Other passengers repeatedly asked P. to stop singing, but P. did not respond to their requests. The flight attendant informed P. that he was violating the rules of behavior on the aircraft, which disturbed the crew and passengers, and therefore coercive measures could be taken against him.

Refer to the Rules of Air Transportation of Passengers and Baggage and the provisions of the Code of Ukraine on Administrative Offenses and use them. What are the features of the formulated norms? Given these features, can these rules be considered administrative and legal?

TASK 2.

B. decided to buy a car from A.. The latter deregistered the car at the ASC, after which a contract of sale was concluded. V. applied to the ASC with a request to register the car and attached all the necessary documents to the application. V.'s request was granted.

What legal relations arose in this case? Do they belong to the relations that are the subject of administrative law? Justify your answer by identifying the features of these relations.

TASK 3.

Fifteen-year-old M. lived with his parents in a private house. Subsequently, his parents purchased an apartment under a contract of sale. Then M. applied to the district department of the migration service with an application for registration of his place of residence at the address of this apartment. M.'s registration was denied with reference to the fact that the apartment belonged to M.'s parents, not to him, however, M. believed that such a refusal violated his right to free choice of residence.

Is M.'s right violated in this situation? Justify your answer with reference to the regulatory provisions.

TASK 4.

Deputy head of the district state administration I., returning home in the evening in his own car, hit a pedestrian, causing him serious bodily harm. By the order of the head of the district state administration, I. was suspended from his position while the district department of internal affairs conducted an investigative check.

Is the order of the head of the district state administration lawful? Justify your answer with reference to legal norms.

A. was appointed the head of the economic department of the regional state administration. A month later, by order of the head of the regional state administration, A. was dismissed from his position because it turned out that he was a cousin of his deputy.

Was A. legally dismissed? Analyze this situation.

TASK 6.

A. went on vacation to Greece. When crossing the border, a customs officer asked A. to present his hand luggage for inspection. The latter did not agree to this, claiming that he did not have any prohibited items for export.

Analyze the situation. Are there any grounds for applying administrative coercion measures to A.?

TASK 7.

N., who committed disorderly conduct, was detained by a police officer with the help of a customs officer who was passing by. The police officer handcuffed him and hit him with a rubber stick because he refused to get into the patrol car.

Determine the legality of the police officer's actions. If you conclude that they are unlawful, draft a complaint. What would have changed in the situation if the stick and handcuffs had been used by a customs officer?

TASK 8.

By the decision of the state fisheries inspector, P. was brought to administrative responsibility for violation of fishing rules. The decision to impose an administrative penalty states that P. illegally caught fish in a pond leased by Svitanok LLC using a net. The prosecutor filed an appeal against this decision. The submission states that P. should be held liable for petty theft of another's property.

Compare the corpus delicti referred to in the task and express your opinion on the validity of the prosecutor's position.

TASK 9.

Seventeen-year-old S. and twelve-year-old K., who were traveling in a tram with their father, did not pay the fare. The fact of fare evasion was discovered by the controller of the municipal enterprise “Miskelektrotransport” and offered S. and K. to pay a fine at the place of the offense. They refused to do so, claiming that they had no money and could not be held liable at all, as they were under the age of liability.

Analyze the situation and determine who should be held liable in this case. What is the age of administrative liability? What are the peculiarities of bringing minors to administrative responsibility?

Tasks: Solve the problem

Task 1.

Unhappy with his dismissal from his job and seeking to hinder the privatization process underway in Ukraine, one of the former ministers, Oleksandr, spread the

rabies virus in several regions. This resulted in several dozen people contracting the disease, three of whom died.

Give a criminal law assessment of Alexander's actions.

Task 2.

Panas, in order to interfere with the election campaign of the candidate for people's deputies of Ukraine Zhanna, during her meeting with voters threw a fragmentation grenade in the direction of the tribune from which the candidate was speaking. The grenade did not explode, but hit Zhanna and caused her moderate bodily harm.

Give a criminal law assessment of Panas's actions.

Task 3.

Junior sergeant Konstantin, being the commander of the department of the special purpose battalion “Kyiv-1” of the Ministry of Internal Affairs of Ukraine, in the ATO zone received an order from the company commander Leonid to hold the position. Since the terrorists' forces were much larger and they were armed with heavy equipment that Kostyantyn did not have, Kostyantyn considered it impossible to carry out this order, as it would have led to significant losses among the manpower of the unit he commanded. In this regard, he decided to retreat from his position and returned with his squad to the location of the main forces of the Kyiv-1 battalion.

Independent work for module 1

You can do the following types of work on your own:

- home-based;

- remote work.

Draft an employment contract for home-based work;

Draw up an employment contract for remote work.

Attach as separate files.

Seminar session 6. Family legal relations

Goal: to study the concepts of family, marriage, rights and obligations of spouses.

Tasks: analysis of questions for self-study on the topic, as well as solving practical situational tasks to enable the teacher to determine the level of mastery of the material by students. The list of individual tasks to be completed can be found below.

Methodological recommendations: oral questioning - includes questioning on any issue presented at the seminar (at the teacher's discretion), answering students' questions, students' questions to other students, answers of other students, answering questions for repetition (on what was studied earlier), answers to control questions on the topic of the seminar.

The student must provide: a correct answer to the question, a complete and specific answer, use scientific and regulatory sources, be able to link theory to practice, maintain logic and reasoning in the presentation of thoughts, and culture of speech.

Tasks: analysis of questions for self-study on the topic, as well as solving practical situational tasks to enable the teacher to determine the level of student learning. The list of individual tasks to be completed can be found below.

List of issues to be discussed:

1. Concept and types of family legal relations
2. Participants in family legal relations
3. Grounds for the emergence of family legal relations

Independent task:

The independent task is for the student to write a commentary on Article 3 of the Family Code - Family.

Tasks: Solve the task and attach the answer to the system.

Problem 1.

Citizen Petrov S.M. and citizen Kurochka A.P. filed an application for marriage to the local registry office. After the deadline set by the legislation of Ukraine, the marriage was not registered because citizen Kurochka AP learned that her fiancé was previously married and has two young children for whom he is obliged to pay alimony according to the court decision.

Petrov S.M. filed a claim for compensation for material damage and non-pecuniary damage with the local court, arguing that his party was preparing for marriage. The statement of claim was accompanied by supporting documents.

Question. How should the local court decide the case according to the Family Code of Ukraine?

*See Article 31 of the Family Code of Ukraine.

Task №2.

The newlyweds Ivanov I.S. and Sidorova O.Y. did not appear for marriage registration within the time limits specified in Article 32 of the Family Code of Ukraine.

After 3.5 months after filing an application for marriage registration, they applied to the same registry office for marriage registration.

Question: How should the registry office resolve the case?

Answer: *See Article 28 of the Family Code of Ukraine

Problem №3.

When dividing the property acquired during the marriage, citizen V. stated in court that after receiving his salary he purchased a unique woodworking machine for professional activities and considered it his personal property.

The next time he bought a refrigerator to meet the needs of the whole family and transferred it for joint use. In his opinion, the refrigerator becomes marital property and should be divided.

Question: How should the court resolve the dispute?

Excerpt. Family Code of Ukraine.

*See Article 57 of the CKU

Task №4.

After completing alternative (non-military) service, Ivanov applied for employment at an enterprise.

When concluding an employment contract with Ivanov, the head of the enterprise orally set him a probationary period of 7 months.

For the entire 7 months, Ivanov worked and did not receive a salary. When the probationary period expired, Ivan continued to work.

Question: Comment on the above situation according to the Labor Code of Ukraine.

Answer: *See Article 26 of the Labor Code

Task №5.

A.S. Sidorov was absent from the workplace for more than three hours without good reason. This fact is confirmed by witnesses and the report of the shift supervisor.

The employer dismissed A.S. Sidorov from work under Art. 40 п.4. of the Labor Code.

Mr. Sidorov filed a lawsuit to reinstate him in his job.

Question: How should the court decide the case?

Answer: *See Art. 40. p.4. (absenteeism (including absence from work for more than three hours during a working day) without valid reasons.

Task №6.

Citizen F. was dismissed by his employer under Art. 40, paragraph 7 of the Labor Code.

On September 12, 2007, according to the foreman Ivanov, citizen F. was drunk at the workplace. Brigadier Ivanov suspended citizen F. from work, but did not check the implementation of his order. Citizen F. continued to work until the end of the shift.

The labor dispute commission reviewed F.'s behavior and recommended that the employer dismiss F. from work for the above reasons.

F. disagreed with the employer's decision and filed a lawsuit to reinstate him to his job.

Question: How should the court resolve the issue under the current legislation?

Answer: *See Art. 40 п.7. of the Labor Code

Seminar session 7. General characteristics of intellectual property rights

Objective: to study the concept of intellectual property, objects and subjects of intellectual property rights.

Tasks: analysis of questions for self-study on the topic, as well as solving practical situational tasks to enable the teacher to determine the level of student learning. The list of individual tasks to be performed can be found below.

Methodological recommendations: oral questioning - includes questioning on any issue presented at the seminar (at the teacher's discretion), answering students' questions, students' questions to other students, answers of other students, answering questions for repetition (on what was studied earlier), answers to control questions on the topic of the seminar.

The student must provide: a correct answer to the question, a complete and specific answer, use scientific and regulatory sources, be able to link theory to practice, maintain logic and reasoning in the presentation of thoughts, and culture of speech.

Tasks: analysis of questions for self-study on the topic, as well as solving practical situational tasks to enable the teacher to determine the level of student learning. The list of individual tasks to be completed can be found below.

List of issues to be discussed:

1. The concept and essence of intellectual property rights

2. Sources of intellectual property rights

3. Legal analysis of objects of intellectual property rights

4. Classification of intellectual property objects

5. Subjects of intellectual property rights

An independent task:

The independent task is for the student to write a commentary on Article 433 of the Civil Code of Ukraine - Objects of Copyright.

Tasks: Solve the task and attach the answer to the system.

Task №1.

Citizen K. made a tuning of his car, among the elements of which was the reproduction of the painting by the artist Vasko on the bumper and doors of the car. One day, while walking through the streets of the city, the artist saw Citizen K's car and decided that his rights had been violated, and therefore sought legal advice. What explanations can the artist get?

Problem №2.

The Devrozh store in advertising (lasting ZO seconds) itself and its products on television and radio used parts of modern popular works for musical accompaniment of advertising. The author of one of these songs decided that the advertiser was infringing his copyright and sought clarification from a lawyer. What clarifications can the author of a musical work get?

Task №3.

A garment company has prepared a summer collection of clothes for a competition and decided to obtain titles of protection for the original elements of the clothes, which are embodied in both their appearance and cutting technology. What legal regime of protection can a garment company obtain for its garments and what kind of titles of protection can it obtain?

Task 4.

The mineral water producer (CJSC) “Crystal Mirror” produces and bottles mineral water that is supplied to the retail network. The CJSC has the relevant documents for extraction, a registered trademark “Crystal Mirror”, which coincides with the name of the geographical location where the well is located. However, for technical reasons, the producer cannot fully pump out the required amount of mineral water. Therefore, several LLCs obtained a permit to pump mineral water from the well in accordance with the procedure established by law and began to sell it, and the name “Crystal Mirror” (at the place of extraction) was indicated on the bottles. Do the LLCs violate the rights of the CJSC by their actions? How should the relations between the CJSC and the LLC be regulated?

Task №5.

Dog trainer Zatsepa has developed a unique method of training service dogs that won prizes at exhibitions and competitions. Subsequently, Zatsepa decided to obtain a security document and sell the recordings of his lessons on cassettes and disks. He turned to a lawyer for help. Is it possible to obtain a title of protection for methods? What is the legal regime for protecting lesson recordings?

Task №6.

Aerobus LLC buys from Poland armchairs containing industrial designs patented in Ukraine, the owner of which is Mebelok LLC. These designs are not protected in Poland. Aerobus LLC imports the chairs to Ukraine and supplies them to public catering establishments. Does Aerobus LLC infringe Mebelok LLC's patent? If so, in what way? What civil remedies can Mebelok LLC apply?

Seminar session 8. Concept and types of civil law contracts. Conclusion, amendment and termination of the contract

Objective: to study the concept and types of civil law contracts, essential terms of the contract, the procedure for concluding, amending and terminating the contract.

Assignments: anumber of questions for self-study on the topic, as well as solving practical situational tasks to enable the teacher to determine the level of student learning. The list of individual tasks to be performed can be found below.

Methodological recommendations: oral questioning - includes questioning on any issue presented at the seminar (at the choice of the teacher), answering students' questions, students' questions to other students, answers of other students, answering questions for repetition (on what was studied earlier), answers to control questions on the topic of the seminar.

The student must provide: a correct answer to the question, a complete and specific answer, use scientific and regulatory sources, be able to link theory to practice, maintain logic and reasoning in the presentation of thoughts, and culture of speech.

Tasks: analysis of questions for self-study on the topic, as well as solving practical situational tasks to enable the teacher to determine the level of student learning. The list of individual tasks to be completed can be found below.

List of issues to be discussed:

1. The concept and types of civil law contracts.
2. Types of civil law contracts.
3. The procedure for concluding, modifying and terminating a contract.

Independent task:

The independent task is for the student to write out a commentary on Article 202 of the Civil Code of Ukraine - The concept and types of transactions.

Tasks: Solve the task and attach the answer to the system.

Problem №1.

Stanislav, a 20-year-old student, was dependent on his parents and studied on a contract basis. Shortly before the end of the first semester, his father gave Stanislav 20,000 UAH to pay for the second semester. However, Stanislav used the money to buy a TV set from his friend. Stanislav's father, referring to Article 199 of the Family Code, according to which an adult son or daughter who is studying must be dependent on his or her parents until they (students) reach the age of 23, argued that the transaction concluded by his son should be declared invalid as contrary to the law. Analyze the situation.

Task №2.

Sergei Movchan received a gift from his grandmother on the occasion of his graduation - a tape recorder. After some time, he asked his grandmother if she would object to his exchanging the tape recorder for a video camera belonging to his friend Kolobov. The grandmother did not object and gave her consent to the transaction in writing. The exchange took place.

When Sergiy's father learned about the exchange, he asked Kolobov to return the tape recorder and take the video camera, since he had not given his consent to the exchange.

Kolobov refused and explained that, as far as he knew, it was not his father who gave Sergiy the tape recorder, but his grandmother, who had given her written consent to the transaction. In such circumstances, Kolobov believed that the minor Sergiy did not need his father's consent to enter into the transaction.

Who is right in this dispute? Will the decision change if Sergei's mother agrees to the exchange at the request of his grandmother?

Problem №3.

Citizens K. and B. concluded a contract of sale of a residential building and notarized it. After paying B. K. moved into the house with his family. After some time, B.'s wife filed a claim with the court to invalidate the contract. At the court

hearing it was established that the conclusion of the contract violated the requirement of Art. 65 of the Family Code of Ukraine on the need for the consent of the other spouse to alienate real estate. Analyze the situation and resolve the dispute.

Seminar session 9. General principles of notaryactivity

Objective: Mastering theoretical material by students and focusing students' attention on complex practical problems related to the study of notarial activities. Special attention should be paid to the digitalization of notary bodies.

Methodological recommendations: oral questioning - includes questioning on any issue presented at the seminar (at the choice of the teacher), answering students' questions, students' questions to other students, answers of other students, answering questions for repetition (on what was studied earlier), answers to control questions on the topic of the seminar.

The student must provide: a correct answer to the question, a complete and specific answer, use scientific and regulatory sources, be able to link theory to practice, maintain logic and reasoning in the presentation of thoughts, and culture of speech.

Tasks: analysis of questions for self-study on the topic, as well as solving practical situational tasks to enable the teacher to determine the level of student learning. The list of individual tasks to be completed can be found below.

List of issues to be discussed:

1. The concept and general characteristics of the special course “Notary in Ukraine”.
2. The concept of a notaryand a notary assistant.
3. Rights and obligations of a notary.
4. Notarial secrecy.
5. Guarantees and restrictions on the activities of a notary.
6. Legal regulation of the Higher Qualification Commission.

Task 1. Write a power of attorney to represent the interests of a citizen in the courts of general jurisdiction.

Task 2. Solve the problem:

Ms. Savchenko went to court to appeal against an incorrectly performed notarial act, which resulted in material damage. Which proceedings should be initiated?

Will the damage caused by an incorrectly performed notarial act be compensated if the injured person is the notary's wife, and why? What responsibility will the notary bear and for what?

Task 3. Solve the problem:

During his stay in the hospital, Mr. Sintsov asked the hospital doctor on duty to certify his power of attorney to receive a postal order for his brother, but he was refused.

Can he appeal the refusal of the hospital doctor on duty and where?

Deadline: during the classroom session according to the schedule.

Form of distance learning: participation in a webinar, online presentations and discussions. Attaching a separate file through the elearn system (practical case study)

Seminar session 10. Inheritance law.

Objective: Mastering theoretical material by students and focusing students' attention on complex practical problems related to the study of notarial activities. Special attention should be paid to the digitalization of notary bodies.

Methodological recommendations: oral questioning - includes questioning on any issue presented at the seminar (at the choice of the teacher), answering students' questions, students' questions to other students, answers of other students, answering questions for repetition (on what was studied earlier), answers to control questions on the topic of the seminar.

The student must provide: a correct answer to the question, a complete and specific answer, use scientific and regulatory sources, be able to link theory to

practice, maintain logic and reasoning in the presentation of thoughts, and culture of speech.

Tasks: analysis of questions for self-study on the topic, as well as solving practical situational tasks to enable the teacher to determine the level of student learning. The list of individual tasks to be completed can be found below.

List of issues to be discussed:

1. The concept of inheritance law
2. Inheritance by law
3. Inheritance by will
4. The concept of inheritance contract

Independent task:

The independent task is for the student to write a commentary on Articles 1261-1265 of the Civil Code of Ukraine.

Tasks: Solve the task and attach the answer to the system

Task 1.

On March 20, 2014, his son, Khmara V.I., applied to a notary for registration of inheritance after the death of Khmara I.I., who died on March 10, 2014, and provided all the necessary documents for issuing a certificate of inheritance. However, when he applied to the notary for a certificate of inheritance after the expiration of the six-month period, he was denied a certificate. The notary explained that on June 18, 2014, an application for acceptance of the inheritance was also filed by the testator's daughter, Rudakevych S.I. Rudakevych S.I. was unable to confirm the fact of kinship with the testator and was recommended to establish it in court. The day before, Rudakevych S.I. called the notary and informed that due to the heavy workload in the court and the long period of consideration of inheritance cases, the court had not yet made a decision on her application. The day before, Rudakevych S.I. called the notary and informed that

due to the heavy workload in the court and the long period of consideration of inheritance cases, the court had not yet made a decision on her application.

Khmara V.I. disagreed with the notary's explanation, stating that there was no court decision to suspend the issuance of his inheritance certificate, and demanded a ruling to refuse to perform the notarial act.

Are the claims of V. Khmara substantiated? Will the notary's refusal to perform a notarial act be lawful?

Problem 2.

The spouses Stakan T.T. and Stakan P.M. entered into a contract of life maintenance with Kotygoroshko I.I. Under the contract, a residential building was alienated.

After the death of T.T. Stakan, P.M. Stakan and I.I. Kotyhoroshko applied to the notary with a request to certify the contract on termination of the life care contract, since I.I. Kotyhoroshko became a disabled person of the first group and is unable to fulfill the terms of the life care contract.

What are the notary's actions?

Task 3.

V.V. Vite bequeathed a residential building belonging to him. In the will, the first floor of the house was bequeathed to his daughter, and the second floor to his son.

After the death of the testator, the son, daughter and grandson (disabled person of the III group) of V.V. Viyt applied to the notary office for registration of inheritance.

What kind of certificate of inheritance should a notary issue?

Task 4.

The heirs of the heirs of the citizen K. applied to the state office. K.: the son with an application for acceptance of the inheritance and issuance of a certificate of

inheritance to the apartment; the wife with an application for renunciation of her share of the inheritance in favor of the testator's son. Within a six-month period, the wife again requested to cancel her application, given that she was not aware of any other inheritance property.

What should the notary do? How will certificates of inheritance be issued?

Task 5.

In January 2021, the spouses P. made a joint will regarding the property that belonged to them on the right of joint joint ownership in favor of citizen U. In February 2021, one of the spouses P. died. U.'s heir under the will applied to a notary's office for acceptance of the inheritance and issuance of a certificate of inheritance under the will. The notary refused to issue the certificate.

Are the notary's actions lawful?

Seminar session 11: Civil procedural law of Ukraine as a branch of law

Objective: Mastering theoretical material by students and focusing students' attention on complex practical problems related to the study of notarial activities. Special attention should be paid to the digitalization of notary bodies.

Methodological recommendations: oral questioning - includes questioning on any issue presented at the seminar (at the choice of the teacher), answering students' questions, students' questions to other students, answers of other students, answering questions for repetition (on what was studied earlier), answers to control questions on the topic of the seminar.

The student must provide: a correct answer to the question, a complete and specific answer, use scientific and regulatory sources, be able to link theory to practice, maintain logic and reasoning in the presentation of thoughts, and culture of speech.

Tasks: analysis of questions for self-study on the topic, as well as solving practical situational tasks to enable the teacher to determine the level of student learning. The list of individual tasks to be completed can be found below.

List of issues to be discussed:

1. Subject matter and system of civil procedural law
2. The concept and importance of the principles of civil procedural law.
3. Basic principles of civil procedural law.

Independent task:

The independent task is for the student to write out a commentary on Article 16 of the Civil Procedure Code of Ukraine - Protection of civil rights and interests by the court.

Tasks: Solve the task

Task 1.

Seventeen-year-old Kirichenko bought a jacket from Mishchenko with the first salary he received at the factory. Kirichenko's parents demanded that he return the jacket to his friend and take his money back. But he did not comply with his parents' demands and the next day entered into a swap agreement with Sykov, a worker at the same plant. According to this agreement, Kirichenko gave Sykov the jacket and received a watch in return. Kirichenko's parents demanded that this contract be canceled as well.

Since Kirichenko's counterparties under both agreements refused to comply with his parents' demands, his father filed lawsuits to the court to invalidate the sale and purchase agreements and the exchange.

Are these claims subject to satisfaction?

Task 2.

Leontovych regularly performed work on the production and registration of web sites on the basis of contractual agreements with customers. During the execution of an order for the production of a website for Pivden, Leontovych became seriously ill, was hospitalized, and therefore delivered the order 25 days later than the contractual deadline. Pivden demanded a reduction in payment for the work performed by a corresponding amount. Leontovych did not agree to reduce the cost of the work performed, referring to the fact that the contract did not provide for cases of reduction of payment for the work performed, and his violation of the contract term occurred for reasons that he could not foresee and prevent, that is, through no fault of his own.

Pivden filed a lawsuit and claimed that Leontovych, as an entrepreneur, should be held liable for failure to fulfill the terms of the contract regardless of his fault, and that his reference to his illness should not be taken into account.

In objecting to Pivden's claim, Leontovych argued that he did not consider himself an entrepreneur, as he was not registered as such anywhere. **Should Leontovych be held liable for the delay in fulfilling the terms of the contract?**

Problem 3.

A supply agreement was concluded between the plant “Vertabud” and the private enterprise “Cosmos”, according to which the plant had to transfer woodworking machines worth 10,000 UAH. The plant fulfilled its obligations on time, but the private enterprise did not pay for the machines. The plant filed a claim with the commercial court to recover the amount of debt and non-pecuniary damage from the private enterprise for failure to fulfill the terms of the contract. Are the plant's claims legitimate? What will be the object of these legal relations?

Problem 4.

In March 2018, Borodina filed a lawsuit against Agin to recover 20 thousand hryvnias from him. In the statement of claim, she stated that on November 15,

2016, Agin bought a necklace from her for UAH 40 thousand, but paid only UAH 20 thousand, and for the rest of the amount he issued a loan receipt, which stipulated the repayment of the debt no later than February 1, 2017. However, after the deadline came, Agin did not pay the debt, explaining that Borodina had not paid the debt to his father, in whose inheritance Agin found a receipt issued by Borodina for a loan of UAH 20 thousand for a period of 2 months in January 2017. Agin found the receipt immediately after his father's death in January 2017, but did not need to repay the debt during this time, although he intended to do so.

13. Questions for the exam in the discipline

"Legal regulation of the industry"

1. List the laws of Ukraine that regulate the main aspects of economic activity of hotel, restaurant and tourism businesses.
2. What is the main body of the system of central executive authorities that ensures the formation and implementation of state policy in the field of hospitality? Its powers.
3. What resolutions of the Cabinet of Ministers of Ukraine regulating the activities of hotel, restaurant and tourism business do you know?
4. Name the national standards of Ukraine in the field of hospitality.
5. What regulations in the field of hospitality you know?
6. The importance of legal regulation of the hospitality industry.
7. The concept, subjects and sources of labor law.
8. The concept, content and procedure for concluding an employment contract
9. Forms and terms of employment contracts. Probationary period when hiring.
10. Types of transfers to another job. Transfer to another workplace.
11. Grounds and procedure for termination of the employment contract.
12. The concept of responsibility.
13. Concept, signs and grounds of legal responsibility.
14. Types of legal liability: concept, general characteristics.
15. Circumstances that exclude the unlawfulness of an act.
16. The concept of administrative penalties.
17. Types of administrative penalties.
18. General rules for imposing administrative penalties.
19. The concept of criminal law.
20. Methods and functions of criminal law.
21. The system of criminal law.
22. The concept and types of family legal relations.

23. Participants in family legal relations
24. Grounds for the emergence of family legal relations
25. The concept and essence of intellectual property rights
26. Sources of intellectual property rights
27. Legal analysis of objects of intellectual property rights
28. Classification of intellectual property objects
29. Subjects of intellectual property rights
30. The concept and types of civil law contracts.
31. Conclusion, amendment and termination of the contract

32. The concept of a notary and a notary assistant;

33. Rights and obligations of a notary;

34. Notarial secrecy;

35. Guarantees and restrictions on the activities of a notary

36. The concept of inheritance law

37. Inheritance by law

38. Inheritance by will

39. The concept of inheritance contract

40. Subject and system of civil procedural law

41. The concept and importance of the principles of civil procedure law.

42. Basic principles of civil procedural law.

14. Test tasks to prepare for the exam in the discipline

"Legal regulation of the industry"

1. Pursuant to Article 126 of the Code of Civil Procedure, several claims may be combined in one proceeding:

A. one plaintiff against one defendant

B. one plaintiff against several defendants

C. several plaintiffs against one defendant

2. **Determine the relevance of**

Subject of the claim	is the part of the claim that constitutes the substantive legal claim of the plaintiff against the defendant, on which the court must make a decision.
Grounds for the claim	the part of the claim that reflects the circumstances by which the plaintiff substantiates his or her claims (Article 119(2)(5) of the Code of Civil Procedure) and the evidence supporting each circumstance, as well as the existence of grounds for exemption from proof (Article 119(2)(6) of the Code of Civil Procedure).
Contents of the claim	the part of the claim that reflects the type of judicial protection, namely, a request to the court to take certain actions related to the application of specific methods of protection of the violated, disputed or unrecognized right.

3. **In addition, the court order must meet the requirements for the content of court orders (Article 210 of the Code of Civil Procedure), in particular, it must contain**

A. introductory part

B. motivational part

C. descriptive part

D. Resultant part

4. **The difference between a tour operator and a travel agent is that:**

A. travel agents are individuals, and tour operators are legal entities;

B. tour operators create and sell a tourist product, and travel agents only sell a tourist product;

C. only tour operators can carry out intermediary activities for the provision of specific and related services;

D. travel agents cannot obtain a license to carry out tourism a

5. **Determine the location of the IOP:**

A. New York (USA);

B. London (UK);

C. Paris (France)

D. Madrid (Spain).

6. **Simplification and harmonization of tax, currency, customs border and other types of regulation of foreign economic relations is:**

A. priority direction of the state policy in the field of tourism;

B. creation of favorable conditions for tourism development;

C. the dominant factor that hinders the development of domestic tourism;

D. correct answers 1 and 2.

7. **The essential terms of the contract are:**

A. conditions on the subject matter of the contract;

B. conditions specified in the law;

C. conditions set by the parties in the contract;

D. the term of the contract.

8. **The subject of the penalty may be:**

A. only a sum of money;

B. money, movable and immovable property;

C. only movable and immovable property;

D. intellectual property.

9. **There is a service agreement:**

A. bilateral, free of charge;

B. confidential, bilateral;

C. bilateral, paid;

D. unilateral, free of charge

10. **A trip to the gravesites of relatives or those killed in the war is called a tour:**

A. nostalgic;

B. ritualistic;

C. cognitive;

D. a memorial tour.

11. Citizens' rights to rest, freedom of movement, and restoration and strengthening of health are enshrined:

A. the Hippocratic Oath;

B. the sanitary book;

C. the Constitution of Ukraine;

D. all answers are correct.

12. The participants of relations arising in the course of tourist activity are:

A. legal entities and individuals;

B. citizens of Ukraine;

C. foreigners and stateless persons;

D. all answers are correct.

13. The place of sale or realization of a tourist service is the place:

A. where the relevant business entity is registered;

B. where the services are realized;

C. there is no correct answer;

D. answers 1 and 2 are correct.

14. How should the term “management” be understood?

A. as power and the art of management;

B. as a way, a manner of communicating with people;

C. as a process and a set of general management functions;

D. all of the above are true.

15. How should the function of motivation be understood?

A. motivating oneself to perform effectively;

B. the process of achieving the goals of the organization;

C. the process of motivating oneself and others to work effectively and achieve the goals of the organization;

D. the process of achieving the goals of the administration.

16. Which of the following organizational management structures requires the manager to have extensive knowledge of all management functions?

A. linear

B. linear-functional;

C. program-targeted;

D. divisional.

17. What creates the management structure of an organization?

A. a set of line and functional services;

B. a set of functional services;

C. a set of line management bodies;

D. a set of technical services.

18. What are the principles of management based on?

A. on the regulations on subdivisions;

B. on the laws in force in Ukraine;

C. on the laws of social development and management patterns;

D. on bylaws.

19. Which factor does not belong to the internal environment of an organization?

A. goals;

B. structure;

C. suppliers;

D. technology.

20. Which is not one of the general characteristics of an organization?

A. availability of resources;

B. the need for management;

C. horizontal division of labor;

D. social control.

21. Name organizational processes as a component of internal management:

A. technical means;

B. communication;

C. decision-making;

D. finance.

22. What is the purpose of analyzing the external environment of an organization?

A. to determine the strengths of the organization;

B. to identify the weaknesses of the organization;

C. to identify external opportunities and threats;

D. all answers are correct.

23. How is the management of an organization carried out?

1. by means of functions, management methods, communications, and management decision-making;

2. through management methods;

3. through communication and management methods;

4. by means of laws and regularities.

24. Which of the following management structures implies that each management body specializes in performing certain functions?

1. linear;
2. functional;
3. divisional;
4. matrix.

25. What is the meaning of complex automation of information processing?

1. use of the latest technology and equipment for information processing;
2. integrated use of technological means of information;
3. combining into a single complex all technological means of information processing using the latest technology, methodology of various procedures for information processing;
4. all answers are correct.

26. Which of the following factors does not belong to the macro environment of an organization?

1. competitors;
2. political factors;
3. demographic factors;
4. social factors.

27. Name the types of organizational regulation:

1. charter;
2. regulations;
3. job description;
4. order.

28. What is meant by the organizational structure of management?

1. composition and subordination of interconnected management units that ensure the implementation of

functions and tasks of the organization's management;

2. the composition of the organization's management units;

3. subordination of management interrelated management links;

4. composition of management units.

29.What is a resolution as a prescriptive method of management?

1. an administrative act of management adopted by a collegial management body of an organization and containing ways of solving important issues concerning the entire organization as a whole;

2. a management act adopted by the head of the organization;

3. a management act adopted by a managed management system;

4. a management act adopted by a group of managers.

30. Economic methods of management are based on the use of:

1. material interests of the collective only;

2. economic interests of each individual;

3. economic interests of the collective and the individual;

4. material interests of the individual only.

31. Which methods of organization management play a leading role in modern conditions?

1.economic;

2. social;

3. organizational and administrative;

4. psychological.

32.What should be considered the internal environment of an organization?

1. goals and structure of the organization;

2. goals, objectives, structure, technology, personnel, organizational culture;

3. tasks and technology of the organization;

4. technology and personnel.

33. Who uses management techniques in an organization?

1. line managers;
2. line and functional managers;
3. economists, commodity experts, engineers;
4. technical specialists.

34. What is a management decision?

1. the main form of manager's influence on the object of management in order to achieve the set goals;
2. a form of managerial activity of a manager in order to accomplish tasks;
3. the result of managers' activities;
4. a form of management of an organization.

35. Why is management functional in nature?

1. because management is an activity, and any activity is considered as the functioning of something, for example, an enterprise;
2. because management requires (implies) different types of influence on a certain object;
3. it is connected with the division of labor in management;
4. it is associated with labor cooperation.

36. In what order are the general management functions realized?

1. organization, planning, control, regulation, motivation;
2. planning, organization, control, motivation, regulation;
3. planning, organization, motivation, control, regulation;
4. organization, control, motivation, planning, regulation.

37. When is the final control carried out in the organization?

1. before the actual start of work;
2. after the planned work is completed;
3. in the course of certain works;
4. when it is convenient for the manager.

38. What is the basis of legitimate power?

1. on the right of a manager to organize the implementation of certain tasks of the organization;

2. on the right of a manager to give certain instructions to subordinates on the performance of certain types of work;

3. on convincing a subordinate of the manager's right to give orders that the subordinate is obliged to fulfill;

4. all answers are correct.

39.Where is the linear management structure mostly used?

1. in the management of small organizations;
2. in the management of large organizations;
3. in the management of an association of organizations;
4. in the management of cooperative organizations.

40. What is the main feature of current control?

1. is carried out in the course of work;
2. is carried out with the help of experts;
3. is carried out according to a strictly regulated procedure;
4. is carried out in a short period of time.

41. Which of the following is not a barrier to communication?

1. inability to listen;
2. unsatisfactory organization structure;
3. poor feedback;
4. non-verbal barriers.

42. The main task of management is?

1. directing employees to work together by setting common goals to achieve the goals of the organization;

2. uniting employees for joint actions by setting specific tasks;

3. ability to manage effectively by improving the structure of the organization;

4. improvement of the management mechanism.

43. What is the specificity of social and psychological methods of management?

1. in direct influence on the psychology of employees;

2. in their focus on the interval of individual employees of the organization;

3. their focus on the social interests of the individual and the team in the management process;

4. in their focus on the material interests of the individual.

44. What are the main stages of the enterprise life cycle?

1. inception, maturity, decline, obsolescence;

2. acceleration of growth, deceleration of growth, decline, maturity, obsolescence

3. origin, acceleration of growth, deceleration of growth, maturity, decline;

4. nucleation, decline.

45. What laws determine the existence and functioning of an enterprise as an open system?

1. purposefulness, integrity, closeness, hierarchy;

2. competitive struggle;

3. reliability, complexity, purposefulness;

4. purposefulness, independence, interconnectedness, naturalness.

46. Where is the functional management structure mostly used?

1. in the management of medium-sized organizations by size and number of employees;

2. in the management of large organizations;

3. in the management of associations of organizations.

4. in the management of corporations.

47. How should the mission of an organization be understood?

1. the main function of the organization;

2. a clearly expressed reason for existence;

3. the main task of the organization;

4. the basic principle of the organization's functioning.

48. What does the term “labor resources” mean as an economic category?

1. the population of working age, both employed and unemployed in social production;

2. the population that has physical and intellectual abilities in accordance with the conditions of labor force renewal;

3. persons of working age who are employed in the economy;

4. all employees who perform production and management operations and are engaged in the processing of labor items using labor means.

49.At which stage of the communication process does the recipient of information translate the sender's symbols into his or her own thoughts?

1. the birth of an idea;

2. encoding;

3. transmission;

4. decoding.

50. Increasing the effectiveness of communications is facilitated by:

1. regulation of information flows;

2. selective perception;

3. filtering;

4. simplification of the message language.

51. What is the main purpose of financial incentives?

1. ensuring the optimal ratio of employees' salaries to the volume and quality of work performed;

2. optimal combination of centralization and independence of individual structural units of the enterprise;

3. ensuring faster growth rates of labor productivity compared to the rates of wage increases;

4. the possibility of increasing wages for performing special types of work.

52. Management decision-making is:

1. choosing one of several possible alternatives;

2. modeling and programming;

3. collective discussion of problems;

4. the result of successive steps that contribute to solving the problem.

53. What is not a form of manifestation of organizational and administrative methods?

1. mandatory order;

2. systems of material incentives;

3. consultations;

4. recommendations.

54. What is confidential information?

1. information that is in the possession, use or control of certain individuals or legal entities and is disseminated at their request in accordance with the conditions provided for;

2. information in the possession of certain legal entities;

3. information in the possession and use of individuals and disseminated at their request in accordance with the conditions stipulated by them.

4. all answers are correct.

55. Which of the following is not a stage of strategic planning?

1. determination of the organization's mission;
2. assessment and analysis of the external environment;
3. setting standards;
4. analysis of strategic alternatives.

56. What is the basic element of the communication process?

1. the origin of the idea;
2. coding and channel selection;
3. message;
4. decoding.

57. What is the main goal of management?

1. to ensure profitable activity of the enterprise;
2. to overcome risks in the market;
3. in the production of goods;
4. to determine effective ways to sell products.

58. What is a corporation?

1. contractual associations established on the basis of a combination of industrial, scientific and commercial interests;
2. associations established to carry out certain types of activities;
3. enterprises established to carry out commercial activities.
4. statutory associations of enterprises, industry, scientific organizations, transport, banks, trade, etc. based on full financial dependence on one or a group of enterprises.

59. What are the types of personnel structures in an organization?

1. functional, social, age, educational and qualification;
2. social, production, economic, technological, organizational;

3. staff, organizational, functional, social, role-based;

4. professional qualification, educational, age, gender, psychological.

60.Which of the following forms of authority is based on the belief of the executor that his superior has unique specialized knowledge?

1. legitimate authority;

2. reference authority;

3. expert power;

4.power based on reward.

61. What is information?

1. data on the internal and external situation of enterprises;

2. a set of data, messages about the economic /commercial/ activities of enterprises and their external environment;

3. a set of information on economic /commercial activities of enterprises;

4. systematized and publicly disclosed information about the environment.

62. What is information of a reference and encyclopedic nature?

1. systematized and publicly disclosed information about the environment;

2. systematized, documented or publicly disclosed information about public, state life and the environment;

3. documented information about public life and the environment;

4. information about the internal and external situation of enterprises.

63. What is a concern?

1. enterprises operating on the basis of financial independence from each other;

2. statutory associations of enterprises, industry, scientific organizations, transport, banks, trade, etc. on the basis of full financial dependence on one or a group of enterprises;

3. associations of industrial and transport enterprises for the purpose of carrying out certain activities;

4. contractual associations created on the basis of a combination of industrial, scientific and commercial interests.

64. Which of the following is not a barrier to communication?

1. inability to listen;

2. unsatisfactory organization structure;

3. poor feedback;

4. non-verbal barriers.

65. Where are matrix organizational management structures mainly used?

1. in the management of multidisciplinary organizations with a large number of production facilities, providing services of a limited life cycle;

2. in the management of joint organizations;

3. in the management of medium-sized organizations;

4. in the management of small organizations.

66. Which of the following forms of power is based on influence through charisma?

1. legitimate power;

2. reference power;

3. expert power;

4. power based on reward.

67. What is a detailed, comprehensive plan of action to achieve an organization's mission and goals in the future?

1.mission

2. strategy;

3. tactics;

4. all answers are correct.

68. Which of the following decisions are typical of the control function?

1. determination of the main purpose of the organization
2. determining the needs of subordinates
3. determination of the organization's strategy
4. evaluation of the results of work.

69. Which of the following forms of power is based on the belief of the executor that he may be punished or deprived of the opportunity to satisfy any of his needs?

1. legal power;
2. power based on coercion;
3. expert power;
4. power based on reward.

70. The conclusion that the main reasons for what is happening within the organization should be sought outside it was made based on the results of research:

1. classical management theory;
3. situational approach to management;
4. process approach to management;
5. systemic approach to management.

71. What is regulation as a management method?

1. enactment of relevant management regulations;
2. development and implementation of organizational regulations and rules that are binding;
3. development of appropriate instructions for staff;
4. all answers are correct.

72. Management principles were first formulated within the framework of:

1. the school of scientific management;
2. process approach to management;
3. administrative school of management;
4. behavioral approach to management.

73. What is a set of techniques, methods and means of behavior of a manager in the process of fulfilling his/her duties in the organization?

1.image of management;
2. management style;
3. management rules;
4. principles of management.

74. Management efficiency is?

1. the result of the implementation of measures aimed at improving production efficiency by saving all production resources;
2. an indicator determined by the ratio of the final result obtained by production to production costs;
3. an indicator determined for the enterprise as a whole and characterizing the total return on the use of all available resources and costs;
4. production profitability indicator.

75. Which economic method of management is used by the state?

1. price regulation;
2. the method of self-sufficiency;
3. system of material incentives;
4. material sanctions.

76. Which category characterizes the thoughtful preparation of future activities, systematically focused on the goals of the organization?

1. organizational and production planning;
2. targeted comprehensive program;
3. commercial calculation;
4. integrated planning.

77. The most flexible way of organizational influence, which involves explaining, familiarizing and advising on the implementation of certain actions?

1. instruction;
2. regulation;
3. standardization;
4. ordering.

78. Which document regulates the procedure for enforcement actions based on administrative acts of higher authorities and orders of the enterprise itself?

1. instructions;
2. charter;
3. orders;
4. orders.

79. What is the system of means and levers of influence on the social and psychological climate in the team, on labor and social activity of the team and its individual employees?

1. social methods of management;
2. sociological methods of management;
3. psychological methods of management;
4. socio-psychological methods of management.

80. Identify business entities in the field of restaurant business in Ukraine:

1. restaurant business establishments regardless of ownership and individual entrepreneurs;

2. restaurant business establishments regardless of ownership;

3. restaurant business establishments regardless of their form of ownership, individual entrepreneurs, foreign legal entities engaged in entrepreneurial activity;

4. no correct answer.

81. The category of restaurant business establishments, united by the characteristic features of the range of culinary products, the contingent of consumers and forms of their service, is:

1. class of restaurant business establishment;

2. type of restaurant business establishment;

3. all answers are correct;

4. there is no correct answer.

82. Identify the restaurant business establishments that are divided into classes by the level of service and range of services provided to consumers:

1. restaurants, bars;

2. restaurants, cafes, bars;

3. restaurants, cafes, bars, buffets;

4. only restaurants.

83. What classes are certain types of restaurant business establishments divided into?

1. into “luxury”, “higher”, “first”;

2. into “luxury”, “higher”, “first”, “second”;

3. to “luxury”, “higher”, “first”, “second”, “third”;

4. there is no correct answer.

84. Identify a business entity in the restaurant industry that carries out retail trade in alcoholic beverages and tobacco products only with a license:

1. a bar with a private form of ownership;
2. restaurants with the state form of ownership;
3. cafes with a collective form of ownership;
4. all answers are correct.

85. Indicate the types of restaurant establishments that can be classified as the first class:

1. restaurants, bars;
2. restaurants, cafes;
3. cafes, bars, buffets;
4. cafes, canteens, snack bars.

86. Identify the functions performed by the restaurant business:

1. production, sale of culinary products and organization of customer service;
2. production, sale of products and services of the restaurant business and organization of service for different contingents of consumers;
3. production, sale, organization of consumption of products and services of the restaurant business;
4. all answers are correct.

87. Identify the locations of restaurant business establishments:

1. a separate capital building;
2. another capital building with a specially equipped room for the sale of food;
3. railway cars and salons of air, water passenger transport and motor vehicles;
4. all answers are correct

88. What the thesis means: “The set of distinctive features of a restaurant business establishment of a certain type, which characterizes the level of requirements for the range of culinary products and drinks, the convenience of their consumption, the organization of service and leisure, is...”?

1. class of restaurant business establishment;
2. type of restaurant business establishment;
3. all answers are correct;
4. there is no correct answer.

89. Which of the following groups by type of economic activity of restaurant business establishments includes a restaurant-bar, coffee shop, tavern, tea salon?

1. sale of food and beverages generally intended for consumption on site;
2. sale of beverages, usually intended for consumption on site;
3. sale of food and beverages, mainly at reduced prices, for consumers grouped by profession;
4. supply of food prepared centrally for consumption in other places.

90. Which of the following groups by type of economic activity of restaurant business establishments includes a tavern, beer hall, nightclub, cocktail bar?

1. the sale of food and beverages generally intended for consumption on site;
2. the sale of beverages generally intended for consumption on site;
3. the sale of food and beverages, mainly at reduced prices, for consumers grouped by profession;
4. supply of food prepared centrally for consumption in other places.

91.Which of the following groups by type of economic activity of restaurant business establishments includes a canteen, a cafeteria?

1. sale of food and beverages generally intended for consumption on site;

2. sale of beverages, usually intended for consumption on site;

3. the sale of food and beverages, mainly at reduced prices, for consumers grouped by profession;

4. supply of food prepared centrally for consumption in other places.

92.Which of the following groups by type of economic activity of restaurant business establishments includes a kitchen factory, a preparatory factory?

1. sale of food and beverages generally intended for consumption on site;

2. sale of beverages generally intended for consumption on the spot;

3. sale of food and beverages, mainly at reduced prices, to consumers grouped by occupation;

4. supply of food prepared centrally for consumption in other places.

93. Which of the following groups by type of economic activity of restaurant business establishments includes a cafeteria, snack bar, hot dog stand?

1. sale of food and beverages generally intended for consumption on site;

2. sale of beverages, usually intended for consumption on site;

3. the sale of food and beverages, mainly at reduced prices, to consumers grouped by profession;

4. supply of food prepared centrally for consumption in other places.

94.Identify from the following the form of production organization, which is the process of concentration of means of production, workers and the process of production in large restaurant establishments, in workshops or production areas of high capacity:

1. cooperation;

2. combining;

3. concentration;

4. specialization.

95.Identify the factors influencing the production and trade structure of the restaurant business:

1. form of organization of production;

2. the range of products and semi-finished products;

3. the degree of readiness of semi-finished products; the volume of production of own production;

4. all of the above.

96.Determine in which restaurant business establishment in the production and trade structure there is no main production:

1. factories - preparatory, canteens - preparatory;

2. establishments - pre-preparation;

3. establishments with a complete production and trade cycle;

4. canteens-distributing.

97. Which of the following elements of the production and trade structure of a restaurant business establishment processes raw materials and semi-finished products into ready-to-eat products?

1. main production;

2. auxiliary production;

3. main and auxiliary production;

4. no correct answer.

98. According to the Rules of operation of restaurant business enterprises, who chooses their type?

1. by a business entity;

2. by a business entity and a local executive body;

3. by the business entity in agreement with the local executive body;

4. by a local executive body.

99.Who chooses the class of restaurant business establishment in accordance with the Rules of operation of restaurant business enterprises?

1. by a business entity;

2. by a business entity and a local executive body;

3. by the business entity in agreement with the local executive authority;

4. by the local executive authority.

100.In what cases shall the selected class of restaurant business establishments be changed?

1. when the body that conducted the confirmation establishes that the establishment does not comply with the selected class;

2. at the initiative of the business entity;

3. all answers are correct;

4. there is no correct answer.

101. Who establishes the mode of operation of restaurant business establishments in the citywide network

1. by a business entity;

2. by a business entity and a local executive authority;

3. by the business entity in agreement with the local executive authority;

4. by the local executive authority.

102.Who establishes the mode of operation of restaurant business establishments that serve consumers at industrial enterprises, educational, medical and healthcare facilities?

1. by a business entity by agreement with the administration of an industrial enterprise (institution, educational and other establishment);

2. by the administration of the relevant institution (enterprise, educational or other institution);

3. by a business entity and a local executive authority;

4. by a business entity in agreement with the local executive authority.

103.Determine the degree of influence of the factor of intra-city migration on the efficiency of the city network of restaurant business establishments:

1. has sufficient influence;

2. no influence;

3. the impact is insignificant;

4. there is no correct answer.

104.What changes occur in the network of restaurant establishments in a certain city district offering a conditionally limited range of dishes with the growth of the coefficient of intra-city migration?

1. no changes occur;

2. the share of cafes and bars increases;

3. the share of cafes increases;

4. the share of fast food outlets is increasing.

105.What changes occur in the network of restaurant establishments in a certain city district with an increase in the coefficient of intra-city migration?

1. there are practically no changes;

2. the share of restaurant establishments offering a relatively full range of dishes increases;

3. the share of restaurant establishments offering a relatively limited range of dishes is growing;

4. there is no correct answer.

106. Which of the following features of production specialization is a shop with a small volume of production, which is a consequence of the impossibility of organizing subject specialization?

1. technological and subject specialization;
2. technological;
3. subject;
4. all answers are correct.

107.Identify the type of production processes that control product quality at different stages of production:

1. service;
2. auxiliary;
3. basic;
4. periodic.

108.Identify the type of production processes that create the conditions for the main processes:

1. periodic;
2. basic;
3. service;
4. auxiliary.

109.Identify the type of production processes that do not require equipment and are performed by production personnel:

1. basic;
2. service
3. auxiliary;
4. non-mechanized.

110.Identify the type of production processes that require personnel and various types of equipment:

1. mechanized;
2. automated;
3. basic;
4. service.

111.Determine the type of production processes in which operations on one type of equipment are sequentially alternated in time and in a certain order:

1. periodic;
2. automated;
3. basic;
4. mechanized.

112.Determine the type of production processes whose main operations are carried out continuously and are stopped only at the moment of complete shutdown or repair of equipment:

1. service;
2. basic;
3. auxiliary;
4. continuous.

113.Identify the type of production processes that are carried out within the main production and are aimed at transforming raw materials (semi-finished products) into finished products:

1. servicing;
2. continuous
3. auxiliary;
4. main.

114.Identify the type of production processes that require automated equipment:

1. continuous;
2. mechanized;
3. automated;
4. no correct answer.

115.According to which principle is the location of production facilities and workshops in restaurant business establishments carried out?

1. proportionality;
2. current;
3. straightness;
4. rhythmicity.

116.Determine the type of production program for a restaurant with centralized production of culinary or confectionery products:

1. planned menu;
2. plan menu;
3. order-order;
4. all answers are correct.

117.Determine the type of production program for a public catering establishment, in which one of the functions is the organization of food consumption:

1. planned menu;
2. plan menu;
3. order-order;
4. all answers are correct.

118.Determine the type of daily production program for a restaurant that serves a certain organized contingent of consumers:

1. planned menu;
2. plan-menu;
3. order-order;
4. all answers are correct.

119.How many signatures should be on the menu of a canteen at an industrial enterprise?

1. one
2. two
3. three;
4. under certain conditions, all three answers are correct.

120.The signature of which person on the cafe menu guarantees the fulfillment of the production task in accordance with the technological discipline?

1. director
2. head of production;
3. cook;
4. waiter.

121.Identify the factors that do not affect the placement of equipment in vegetable shops:

1. the range of dishes in the menu;
2. the amount of work performed in the shop;
3. the total area of the shop;
4. the number of simultaneously employed workers.

122.In the meat departments of which type of restaurant business establishments are created current lines for the production of semi-finished products?

1. factory-kitchen;
2. canteen-preparatory at an industrial enterprise;
3. restaurant at the hotel for 500 seats;
4. a restaurant with national cuisine (Georgian, Uzbek, etc.).

123.According to what requirements should technological lines and workplaces in procurement shops have their own technological and organizational equipment?

1. sanitary norms and rules;
2. technological requirements;
3. regulatory and technical documentation;
4. all answers are correct.

124.Identify the person responsible for quality control of semi-finished products in restaurant business establishments:

1. head of production;
2. head of the shop; chef foreman;
3. sanitary and technological food laboratory;
4. all answers are correct.

125.Identify the main regulatory and technological document for restaurant business establishments:

1. technological card of a specialty dish;
2. technological scheme of production;
3. the star of recipes of dishes and culinary products;
4. all answers are correct.

126.Which institution establishes the procedure for importing food products, food raw materials and related materials into Ukraine?

1. customs service;
2. local authorities of the border regions;
3. Antimonopoly Committee of Ukraine;
4. The Cabinet of Ministers of Ukraine.

127.Which institution controls compliance with the procedure for importing food products, food raw materials and related materials into the customs territory of Ukraine?

1. Local authorities of the border regions;
2. Border guards;
3. Customs services;
4. Ministry of Internal Affairs

128. Who is responsible for the list and content of data on the safety of equipment, inventory, technological lines, etc. of foreign production imported to Ukraine for use in restaurant establishments?

1. The Chief State Sanitary Doctor of Ukraine;
2. The Cabinet of Ministers of Ukraine;
3. Minister of Health of Ukraine;
4. all answers are correct.

129. Which person does not carry out quality control of raw materials in restaurant business establishments?

1. representative of the quality control service of the restaurant business establishment;
2. a laboratory worker, if any; head of production (deputy head of production), cook-foreman;
3. a barman (if there is a buffet);
4. distributor of own production on the self-service line.

130.Which of the following actions does a buyer have the right to take in the process of retail trade in products of a restaurant business establishment?

1. checking the quality of the goods;
2. checking the measure, weight of the goods;
3. checking the price tag for the goods;
4. the buyer has the right to take all actions.

131.In which institutions is the registration of electronic cash registers mandatory?

1. District state administration;
2. State Standard of Ukraine;
3. State Tax Inspection;
4. Ministry of Internal Affairs.

132.Identify the person who periodically checks all scales and weights to them that are in the restaurant business:

1. a technical service worker who is responsible for the operation of weighing devices in the restaurant business establishment;
2. state attorney of the State Committee for Standardization, Metrology and Certification of Ukraine;
3. a representative of the state tax inspection;
4. a representative of the relevant department of the district state administration.

133. Which law regulates tourism activities, including hotel activities in Ukraine?

1. The Law of Ukraine “On hotel business”
2. The Law of Ukraine “On Tourism”
3. The Law of Ukraine “On Protection of Consumer Rights”
4. The Law of Ukraine “On Standardization”

134. Which regulatory document defines the general requirements for hotel services in Ukraine?

1. ISO 9001
2. The Law of Ukraine “On licensing”
3. DSTU 4269:2003
4. The Law of Ukraine “On Enterprises”

135. Which bodies are responsible for standardization in the hotel industry?

1. State Customs Service
2. Ministry of Education
3. National Bank of Ukraine
4. State Service of Tourism and Resorts

136. What system is used to classify hotels in Ukraine?

1. The star system
2. Rating system based on reviews
3. The point system
4. User ratings

137. Which international standard is widely used in the hotel industry for quality management?

1. ISO 45001
2. ISO 14001
3. ISO 9001
4. ISO 22000

138. What sanction is provided for the misuse of budget funds in the hotel industry?

1. Reduction of the number of stars
2. Penalty and refund

3. License revocation
4. Improving the hotel rating

139. What is regulated by DSTU 4268:2003 in the field of hotel business?

1. General requirements for infrastructure and services in hotels
2. Requirements for food in hotels
3. Requirements for environmental safety
4. Requirements for financial reporting

140. Which body is responsible for certification of hotel enterprises in Ukraine?

1. National Accreditation Agency of Ukraine
2. National Bank of Ukraine
3. Ministry of Internal Affairs
4. State Tourism Service

141. What is the state program for tourism development in Ukraine for 2021-2026?

1. Hotel business development program
2. International hotel standardization program
3. State program of tourism development
4. Small business support program

142. Which of the following documents establishes requirements for consumer protection in the hotel business?

1. The Law of Ukraine “On Protection of Consumer Rights”
2. DSTU 4268:2003
3. The Law of Ukraine “On Tourism”
4. The Law of Ukraine “On the State Budget”

143. Which Law of Ukraine defines the organizational, economic and social basis for the development of resorts in Ukraine?

1. The Law of Ukraine “On Tourism”
2. The Law of Ukraine “On resorts”
3. Law of Ukraine “On Standardization”
4. Law of Ukraine “On Protection of Consumer Rights”

144. Which Law of Ukraine defines the basic, legal, organizational, socio-economic provisions for the implementation of the state policy of Ukraine in the field of tourism?

1. The Law of Ukraine “On Tourism”
2. The Law of Ukraine “On Resorts”
3. Law of Ukraine “On Standardization”
4. Law of Ukraine “On Protection of Consumer Rights”

145. An accommodation facility located outside the city limits along a highway, usually in a one- or two-story building or part of a building with a separate entrance, which has conditions for parking and

The following shall be considered as:

a) a motel;

b) tourist center

c) camping

d) a guesthouse.

146. An accommodation facility located in a remote mountainous area on a on a tourist route and intended for short-term stay and recreation is

a) a tourist base

b) tourist complex

c) mountain shelter

d) a guesthouse.

147. An accommodation facility similar to a hotel with minimal amenities, usually of seasonal operation, located in a recreational area, that provides conditions for recreation is:

a) tourist base

b) tourist complex

c) a mountain shelter

d) recreation center.

148. A hotel located on the territory of a resort or recreational area, which provides treatment services in a regulated manner, is

a) sanatorium

b) dispensary

c) boarding house

d) recreation center.

149. A hotel that has conditions for organizing and holding congress events is

a) a congress hotel

b) business hotel

c) hotel and office center;

d) congress center.

150. A means of accommodation in a separate furnished room of a guest apartment in a residential building, which provides minimal amenities and mostly offers breakfast, is

a) bungalow

b) a guest apartment

c) guest room;

d) cottage.

151. Treatment is a mandatory component of which accommodation facility?

a) sanatorium

b) a dispensary;

c) boarding house;

d) hotel.

152. The following shall not be classified as health-improving enterprises of the hotel industry:

a) sanatorium

b) a dispensary

c) medical complex;

d) hotel.

153. Health and medical institutions with regulated regime of rest for people with various types of diseases and compulsory dietary nutrition include

a) sanatorium

b) a dispensary

c) medical complex;

d) hotel.

154. The material and technical base of the hotel industry is:

a) a set of all means and objects of labor used in the process of creating and providing hotel services;

b) part of the means of labor that is repeatedly involved in the production and operational process;

c) part of the means of labor, which is involved in the production and operational process once;

d) a part of labor means that is repeatedly involved in the production and operational process, fully or partially retains its natural form, transfers its cost to

services in parts as it is used up and reimburses its cost in the process of selling services.

155. Production assets in the hotel industry include:

a) means of labor used in the production and operational process;

b) means of labor that are either used in the production and operational process or contribute to its implementation;

c) labor means that contribute to the production and operational process;

d) funds that serve to meet the domestic and social and cultural needs of employees.

156. The first document that a guest - a citizen of Ukraine - fills out when checking into a hotel is called:

a) invoice

b) business card

c) registration card

d) guest's questionnaire.

157. The first document filled in by a guest - a foreign citizen - when checking into a hotel is called:

a) invoice

b) business card

c) registration card

d) guest questionnaire.

158. A document that entitles guests staying in a hotel to receive room keys and be served by hotel services is called:

a) invoice

b) business card

c) registration card

d) guest questionnaire.

159. Human resource potential of an enterprise is:

a) a set of employees of different professional and qualification groups employed at the enterprise;

b) opportunities inherent in employees;

c) a part of the able-bodied population that corresponds to the hotel industry by its age, physical and educational data;

d) part of the able-bodied population that can be involved in labor activity.

160. Qualification is:

a) a type of labor activity, the performance of which requires relevant specialized knowledge;

b) a type of labor activity, the performance of which requires appropriate practical skills;

c) a narrow type of labor activity within a profession;

d) a set of special knowledge and skills that determine the degree of preparation for the performance of professional functions of a certain complexity.

161. Management is:

a) a set of principles, methods, means and forms of managing an enterprise in order to increase its efficiency and profitability;

b) a set of stable norms, principles and beliefs about how a given organization should and can respond to external influences, how to behave in the organization and what is the essence of its existence

c) a set of interacting elements that form a single whole;

d) a set of certain circumstances and factors that influence the process of making management decisions.

162. The term “management” and its application:

a) applies mainly to the activities of people in the field of economy;

b) is synonymous with the term “management”, but it is mainly applied to a wider range of objects, different types of human activity;

c) is not synonymous with the term “management” and is applied only to the activities of people in the field of economy;

d) is used to define a system of measures to coordinate human activity.

163. What is meant by the term “management”?

a) management of a system;

b) management of a socio-economic system (enterprise);

c) management of anything;

d) constant control over the activities of personnel in an organization.

164. What does the term “management” mean and what language does it come from?

a) English, means to lead, to be in charge, to be in charge, to be able to cope with any problem;

b) German, meaning to lead, to be in charge of something;

c) Hebrew, means to lead, to be in charge of something;

d) Russian, means to be in charge of something.

165. Management from a functional perspective is a process of:

a) planning, organization, control, regulation;

b) planning, organization, motivation, control, which are necessary to achieve a certain goal;

c) planning, organization, motivation;

d) organization and control.

166. The subject and object of management are united by:

a) partnership and common position;

b) a common place of activity

c) a common purpose of activity;

d) a common desire to make a profit.

167. The object of management is:

a) a person or group of people who are managed;

b) the management apparatus;

c) people who are engaged in management;

d) people who perform certain tasks.

168. The strengths of small enterprises include:

a) simplicity of enterprise management;

b) financial dependence on other individuals and legal entities

c) instability of wages;

d) lack of experience, insufficient competence.

169. The weaknesses of small enterprises are:

a) difficulties with financing;

b) short payback period for costs;

c) short terms of construction and reconstruction of the enterprise

d) simplicity of enterprise management.

170. Franchising is:

a) a contract, an agreement between a seller and a buyer, under which the seller of a trademarked product or service grants the exclusive right to distribute and sell this product or service in exchange for a monetary remuneration, provided that the buyer complies with the production and service technologies;

b) an agreement concluded between the owner of an enterprise and a company specializing in the management of the relevant types of enterprises;
c) a privileged right to conduct additional business;
d) a set of interconnected elements of the management system for further improvement of the activities of the international cooperation partner.

171. Franchisor:

a) the seller of the franchise;

b) the buyer of the franchise;

c) intermediary

d) client.

172. Franchisee:

a) the buyer of the franchise;

b) the seller of the franchise;

c) intermediary

d) client.

173. Advantages of franchising:

a) targeted training of personnel;

b) lack of independence of the franchisee

c) difficulties in canceling the agreement;

d) limitation of the franchisee's territorial expansion to the territory assigned to it in the

territory assigned to the franchisee in the agreement.

174. The type of franchising is:

a) business

b) sectoral

c) systemic

d) social.

175. Lump sum payments:

a) a fixed contractual amount to be paid over a period of time;

b) down payment

c) a percentage of profits;

d) certain sums of money that the franchisee is obliged to pay to the franchisor; regularly throughout the franchise, in payment for the privileges, goods or services that the franchisor provides to the franchisee.

176. Management contract:

a) an agreement concluded between the owner of an enterprise and a company specializing in the management of the relevant types of enterprises;

b) a privileged right to conduct additional business;

c) a contract, an agreement between a seller and a buyer, under which the seller of a trademarked product or service grants the exclusive right to distribute and sell the product or service in exchange for a monetary remuneration, provided that the buyer complies with the production and service technologies;

d) granting the operator the right to sell the enterprise.

177. The staff of an enterprise is:

a) a set of seasonal employees;

b) a set of permanent employees;

c) a set of workers;

d) a set of employees;

178. A profession is:

a) a type of labor activity;

b) a type of labor activity, the performance of which requires an appropriate set of special knowledge and practical skills;

c) a type of labor activity within the qualification;

d) a set of special knowledge and practical skills that determine the degree of readiness of an employee to perform professional functions of the appropriate complexity.

179. A qualification is:

a) the type of labor activity within the qualification;

b) a type of labor activity, the performance of which requires an appropriate set of special knowledge and practical skills;

c) a narrow type of labor activity within the profession;

d) a set of special knowledge and practical skills that determine the degree of readiness of an employee to perform professional functions of the appropriate complexity.

180. Specialization is:

a) a type of labor activity within the qualification;

b) a type of labor activity, the performance of which requires an appropriate set of special knowledge and practical skills;

c) a narrow type of labor activity within the profession;

d) a set of special knowledge and practical skills that determine the degree of readiness of an employee to perform professional functions of the appropriate complexity.

181. Franchising is an agreement between a seller and a buyer under which the seller of a trademarked product or service grants the exclusive right to distribute and sell that product or service in exchange for a monetary remuneration, provided that the buyer complies with the production and service technologies.

1) yes

2) no

182. Is a hotel an inn or a house with servants, rooms for visitors and food?

1) yes

2) no

183. Additional services - the scope of services that do not belong to the basic services of the hotel, ordered and paid by the consumer additionally under a separate agreement?

1) yes

2) no

184. The State Committee of Ukraine for Tourism on the basis of the Law:

- implements the state policy in the field of tourism and is responsible for its further development;

- participates in the preparation of draft legislative and other regulatory acts on tourism?

1) yes

2) no

185. Franchising is an agreement between a seller and a buyer under which the seller of a trademarked product or service grants the exclusive right to distribute and sell that product or service in exchange for a monetary remuneration, provided that the buyer complies with the production and service technologies.

1) yes

2) no

15. Recommended sources

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