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**EDUCATIONAL AND RESEARCH INSTITUTE OF LAW**

**THEORY AND HISTORY OF STATE AND LAW DEPARTMENT**

**LECTURES**

**on a subject “Funadementals of Law”**

**for all Fields of Study and Majors**

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**Theme 1. Fundamentals of theory of a state**

Plan

1. Theories of a state origin.
2. A concept and attributes of a state.
3. Functions of a state.
4. A mechanism and an apparatus of a state.
5. A form of a state.
6. A legal state and a civil society.

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**1. Theories of a state origin.**

Main theories of the state origin:

The Natural Theory – man's urge toward being part of the community.

The Force Theory – one person or group forced all people within an area to obey their rule. It happens through war, where the strong dominated the weak.

The Divine Theory – God created the state, and that He gave certain people the "divine right" to govern these lands.

The Divine Right of Kings Theory – spiritual power was given to certain as sovereigns of the state and thus absolute power of his subjects.

The Social Contract Theory – the state is essentially a contract between the leader and the people.

The Patriarchal Theory – the father head of the family. A family is the first constituent of society.

**2. A concept and attributes of a state.**

The word state and its cognates in other European languages (stato in Italian, état in French, Staat in German) ultimately derive from the Latin status, meaning "condition" or "status."

With the revival of the [Roman law](http://en.wikipedia.org/wiki/Roman_law) in the 14th century in Europe, this Latin term was used to refer to the legal standing of persons (such as the various "[estates of the realm](http://en.wikipedia.org/wiki/Estates_of_the_realm)" - noble, common, and clerical), and in particular the special status of the king. The word was also associated with Roman ideas (dating back to [Cicero](http://en.wikipedia.org/wiki/Cicero)) about the "status [rei publicae](http://en.wikipedia.org/wiki/Res_publica)", the "condition of public matters". In time, the word lost its reference to particular social groups and became associated with the legal order of the entire society and the apparatus of its enforcement.

In English, "state" is a contraction of the word "estate", which is similar to the [old French](http://en.wikipedia.org/wiki/Old_French) estat and the modern [French](http://en.wikipedia.org/wiki/French_language) état, both of which signify that a person has status and therefore estate. The highest estates, generally those with the most wealth and social rank, were those that held power.

The early 16th century works of [Machiavelli](http://en.wikipedia.org/wiki/Machiavelli) (especially [The Prince](http://en.wikipedia.org/wiki/The_Prince)) played a central role in popularizing the use of the word "state" in something similar to its modern sense.

### Definitions

There is currently no academic [consensus](http://en.wikipedia.org/wiki/Consensus) on the most appropriate definition of the state. The term "state" refers to a set of different, but interrelated and often overlapping, theories about a certain range of political [phenomena](http://en.wikipedia.org/wiki/Phenomena). The act of defining the term can be seen as part of an ideological conflict, because different definitions lead to different theories of state function, and as a result validate different political strategies.

According to the [Oxford English Dictionary](http://en.wikipedia.org/wiki/Oxford_English_Dictionary), a state is "a an organized political community under one [government](http://en.wikipedia.org/wiki/Government); a [commonwealth](http://en.wikipedia.org/wiki/Commonwealth); a [nation](http://en.wikipedia.org/wiki/Nation). b such a community forming part of a[federal republic](http://en.wikipedia.org/wiki/Federal_republic), esp the [United States of America](http://en.wikipedia.org/wiki/United_States_of_America)". However, the most commonly used definition is Max Weber's, which defines the state as a compulsory political organization with a [centralized](http://en.wikipedia.org/wiki/Centralized) [government](http://en.wikipedia.org/wiki/Government) that maintains a [monopoly of the legitimate use of force](http://en.wikipedia.org/wiki/Monopoly_of_the_legitimate_use_of_force) within a certain territory.

General categories of state institutions include administrative [bureaucracies](http://en.wikipedia.org/wiki/Bureaucracies), [legal systems](http://en.wikipedia.org/wiki/Legal_systems), and [military](http://en.wikipedia.org/wiki/Military) or [religious](http://en.wikipedia.org/wiki/Religious) organizations.

States may be classified as [sovereign](http://en.wikipedia.org/wiki/Sovereign_state) if they enjoy a [monopoly of the legitimate use of force](http://en.wikipedia.org/wiki/Monopoly_of_the_legitimate_use_of_force) and are not dependent on, or subject to any other power or state.

The state is political organization of having supreme, independent authority over a geographic area, such as a territory. It can be found in a power to rule and make law that rests on a political fact for which no purely legal explanation can be provided. In theoretical terms, the state is close, if not identical to the idea of "sovereignty", historically, from [Socrates](http://en.wikipedia.org/wiki/Socrates) to [Thomas Hobbes](http://en.wikipedia.org/wiki/Thomas_Hobbes), has always necessitated a moral imperative on the entity exercising it.

The [United Nations](http://en.wikipedia.org/wiki/United_Nations) currently only requires that a sovereign state has an effective and independent government within a defined territory. According to current international law norms, states are only required to have an effective and independent system of government pursuant to a community within a defined territory. For centuries past, the idea that a state could be sovereign was always connected to its ability to guarantee the best interests of its own citizens. Thus, if a state could not act in the best interests of its own citizens, it could not be thought of as a “sovereign” state.

Other states are subject to external [sovereignty](http://en.wikipedia.org/wiki/Sovereignty) or [hegemony](http://en.wikipedia.org/wiki/Hegemony) where ultimate sovereignty lies in another state. Many states are [federated states](http://en.wikipedia.org/wiki/Federated_state) which participate in a [federal union](http://en.wikipedia.org/wiki/Federal_union). A federated state is a territorial and [constitutional](http://en.wikipedia.org/wiki/Constitution) community forming part of a [federation](http://en.wikipedia.org/wiki/Federation). Such states differ from [sovereign states](http://en.wikipedia.org/wiki/Sovereign_state), in that they have transferred a portion of their [sovereign](http://en.wikipedia.org/wiki/Sovereignty) powers to a [federal government](http://en.wikipedia.org/wiki/Federal_government).

The concept of the state can be distinguished from the concept of [government](http://en.wikipedia.org/wiki/Government). The government is the particular group of people, the administrative [bureaucracy](http://en.wikipedia.org/wiki/Bureaucracy), that controls the state apparatus at a given time. That is, governments are the means through which state power is employed. States are served by a continuous succession of different governments.

Each successive government is composed of a specialized and privileged body of individuals, who monopolize political decision-making, and are separated by status and organization from the population as a whole. Their function is to enforce existing laws, legislate new ones, and arbitrate conflicts via their monopoly on violence. In some societies, this group is often a self-perpetuating or hereditary class. In other societies, such as [democracies](http://en.wikipedia.org/wiki/Democracies), the political roles remain, but there is frequent turnover of the people actually filling the positions.

### States and nation-states

See also: [Nation-state](http://en.wikipedia.org/wiki/Nation-state)

States can also be distinguished from the concept of a "[nation](http://en.wikipedia.org/wiki/Nation)", which refers to a large geographical area, and the people therein who perceive themselves as having a common identity.

### The state and civil society

The state is sometimes contrasted with [civil society](http://en.wikipedia.org/wiki/Civil_society).

1. **Functions of a state.**

Functions of a state are basic directions of its activity. Tasks and aim of a state are represented in the functions of a state.

The are many functions of a state.

1. According to the spheres of public life they are divided into humanitarian, economic, political, social etc.
2. According to the time realization functions are divided into permanent and temporal.
3. According to the social value they are divided into basic and unbasic.
4. According to the territorial orientation they are divided into internal and external functions.

**4. A mechanism and an apparatus of a state.**

A mechanism of a stateis a system of all state organizations, which carry out tasks and realize functions of a state.

A mechanism of a state consists of 3 parts:

* an apparatus of a state;
* public institutions;
* state enterprises.
1. **A form of a state.**

A form of government, or form of state governance, refers to the set of political [institutions](http://en.wikipedia.org/wiki/Institutions) by which a [government](http://en.wikipedia.org/wiki/Government) of a [state](http://en.wikipedia.org/wiki/State_%28polity%29) is organized. Synonyms include "regime type" and "system of government".

A monarchy is a [form of government](http://en.wikipedia.org/wiki/Form_of_government) in which the office of head of state is usually held until death or abdication and is often hereditary and includes a [royal house](http://en.wikipedia.org/wiki/Royal_house). In some cases, the monarch is elected. These exceptions make it difficult to define "monarchy" precisely; the most objective and comprehensive (albeit circular) definition would seem to be that a monarchy is a government that calls itself a monarchy. The monarch often bears the title king or queen. However, emperors/empresses, grand dukes/grand duchesses, princes/princesses and other ranks, are or have been used to designate monarchs. As explained below, the word monarch means 'single ruler', but cultural and historical considerations would appear to exclude presidents and other heads of state. Historically, the notion of monarchy may emerge under different circumstances. It may grow out of [tribal kingship](http://en.wikipedia.org/wiki/Tribal_kingship), and [royal priesthood](http://en.wikipedia.org/wiki/Priest) and the office of monarch (kings) becoming typically hereditary, resulting in successive [dynasties](http://en.wikipedia.org/wiki/Dynasties) or "houses", especially when the leader is wise and able enough to lead. It may also be a consequent emergence after an act of violence is committed upon local communities by an invading group, which usurps the communities' rights over traditions. The leader of the usurping group often establishes himself as a [monarch](http://en.wikipedia.org/wiki/Monarch). A state of monarchy is said to result that reveals the relationships between resources, communities, [monarch](http://en.wikipedia.org/wiki/Monarch) and his office. Even in antiquity, the strict hereditary [succession](http://en.wikipedia.org/wiki/Succession) could be tempered by systems of [elective monarchy](http://en.wikipedia.org/wiki/Elective_monarchy), where an assembly elects a new monarch out of a pool of eligible candidates. This concept has also been modernized, and [constitutional monarchies](http://en.wikipedia.org/wiki/Constitutional_monarchies) where the title of monarch remains mostly ceremonial, without, or with very limited political power.

Currently, 44 sovereign nations in the world have [monarchs](http://en.wikipedia.org/wiki/List_of_current_sovereign_monarchs) acting as heads of state, 16 of which are [Commonwealth realms](http://en.wikipedia.org/wiki/Commonwealth_realm) that recognize [Queen Elizabeth II](http://en.wikipedia.org/wiki/Queen_Elizabeth_II) as their head of state. The historical form of [absolute monarchy](http://en.wikipedia.org/wiki/Absolute_monarchy) is retained only in [Brunei](http://en.wikipedia.org/wiki/Brunei), [Oman](http://en.wikipedia.org/wiki/Oman), [Qatar](http://en.wikipedia.org/wiki/Qatar), [Saudi Arabia](http://en.wikipedia.org/wiki/Saudi_Arabia), [Swaziland](http://en.wikipedia.org/wiki/Swaziland) and[Vatican City](http://en.wikipedia.org/wiki/Vatican_City).

A republic is a [form of government](http://en.wikipedia.org/wiki/Form_of_government) in which the people, or some significant portion of them, retain supreme control over the government, at least in theory, and where offices of state are not granted through heritage. The common modern definition of a republic is a government having a head of state who is not a monarch. The word "republic" is derived from the [Latin](http://en.wikipedia.org/wiki/Latin) phrase [res publica](http://en.wikipedia.org/wiki/Res_publica), which can be translated as "a public affair", and often used to describe a [state](http://en.wikipedia.org/wiki/State_%28polity%29) using this form of government.

Both modern and ancient republics vary widely in their ideology and composition. In classical and medieval times the archetype of all republics was the [Roman Republic](http://en.wikipedia.org/wiki/Roman_Republic), which referred to Rome in between the period when it had kings, and the periods when it had emperors. The Italian medieval and [Renaissance](http://en.wikipedia.org/wiki/Renaissance) political tradition today referred to as "[civic humanism](http://en.wikipedia.org/wiki/Civic_humanism)" is sometimes considered to derive directly from Roman republicans such as [Sallust](http://en.wikipedia.org/wiki/Sallust) and [Tacitus](http://en.wikipedia.org/wiki/Tacitus). However, Greek-influenced Roman authors, such as [Polybius](http://en.wikipedia.org/wiki/Polybius) and [Cicero](http://en.wikipedia.org/wiki/Cicero), sometimes also used the term as a translation for the Greek [politeia](http://en.wiktionary.org/wiki/politeia) which could mean regime generally, but could also be applied to certain specific types of regime which did not exactly correspond to that of the Roman Republic. An example of this is [Sparta](http://en.wikipedia.org/wiki/Sparta), which had two kings but was not considered a normal monarchy as it also had [ephors](http://en.wikipedia.org/wiki/Ephor) representing the common people. Republics were not equated with classical democracies such as [Athens](http://en.wikipedia.org/wiki/Athenian_democracy), but had a democratic aspect to them.

In modern republics such as the [United States](http://en.wikipedia.org/wiki/United_States) and [India](http://en.wikipedia.org/wiki/India), the executive is legitimized both by a [constitution](http://en.wikipedia.org/wiki/Constitution) and by popular [suffrage](http://en.wikipedia.org/wiki/Suffrage). [James Madison](http://en.wikipedia.org/wiki/James_Madison), the fourth [President of the United States](http://en.wikipedia.org/wiki/President_of_the_United_States), compared republican government to [democratic government](http://en.wikipedia.org/wiki/Democracy), and found democracy wanting. [Montesquieu](http://en.wikipedia.org/wiki/Montesquieu) included both [democracies](http://en.wikipedia.org/wiki/Democracy), where all the people have a share in rule, and [aristocracies](http://en.wikipedia.org/wiki/Aristocracy) or [oligarchies](http://en.wikipedia.org/wiki/Oligarchy), where only some of the people rule, as republican forms of government.

Most often a republic is a [sovereign](http://en.wikipedia.org/wiki/Sovereignty) country, but there are also [subnational entities](http://en.wikipedia.org/wiki/Subnational_entities) that are referred to as republics, or which have governments that are described as "republican" in nature. For instance, [Article IV](http://en.wikipedia.org/wiki/Article_Four_of_the_United_States_Constitution) of the [Constitution of the United States](http://en.wikipedia.org/wiki/Constitution_of_the_United_States) "guarantees to every State in this Union a Republican form of Government". The [Soviet Union](http://en.wikipedia.org/wiki/Soviet_Union) was a single state composed of distinct and nominally sovereign [Soviet Socialist Republics](http://en.wikipedia.org/wiki/Soviet_Socialist_Republic).

A presidential system is a [system of government](http://en.wikipedia.org/wiki/System_of_government) where an [executive branch](http://en.wikipedia.org/wiki/Executive_%28government%29) exists and presides (hence the name) separately from the [legislature](http://en.wikipedia.org/wiki/Legislature), to which it is not [responsible](http://en.wiktionary.org/wiki/responsible) and which cannot, in normal circumstances, [dismiss](http://en.wiktionary.org/wiki/dismiss) it.

The concept of separate spheres of influence of the executive and legislature is specified in the [Constitution of the United States](http://en.wikipedia.org/wiki/Constitution_of_the_United_States), with the creation of the office of [President of the United States](http://en.wikipedia.org/wiki/President_of_the_United_States) elected separately from Congress.

Although not exclusive to [republics](http://en.wikipedia.org/wiki/Republic), and applied in the case of semi-constitutional [monarchies](http://en.wikipedia.org/wiki/Monarchy) where a [monarch](http://en.wikipedia.org/wiki/British_monarchy)exercises power (both as [head of state](http://en.wikipedia.org/wiki/Head_of_state) and chief of the [executive branch](http://en.wikipedia.org/wiki/Executive_branch) of government) alongside a legislature, the term is often associated with republican systems in the [Americas](http://en.wikipedia.org/wiki/Americas).

* The [president](http://en.wikipedia.org/wiki/President) does not propose [bills](http://en.wikipedia.org/wiki/Bill_%28proposed_law%29). However, the president has the power to [veto](http://en.wikipedia.org/wiki/Veto) acts of the legislature and, in turn, a [supermajority](http://en.wikipedia.org/wiki/Supermajority) of legislators may act to override the veto. This practice is derived from the [British](http://en.wikipedia.org/wiki/United_Kingdom) tradition of [royal assent](http://en.wikipedia.org/wiki/Royal_Assent) in which an act of parliament cannot come into effect without the assent of the [monarch](http://en.wikipedia.org/wiki/British_monarchy).
* The president has a fixed term of office. Elections are held at scheduled times and cannot be triggered by a[vote of confidence](http://en.wikipedia.org/wiki/Vote_of_confidence) or other such parliamentary procedures. In some countries, there is an exception to this rule, which provides for the removal of a president who is found to have broken a law.
* The executive branch is unipersonal. Members of the [cabinet](http://en.wikipedia.org/wiki/Cabinet_%28government%29) serve at the pleasure of the president and must carry out the policies of the executive and legislative branches. However, presidential systems frequently require legislative approval of presidential nominations to the cabinet as well as various governmental posts such as [judges](http://en.wikipedia.org/wiki/Judge). A president generally has power to direct members of the cabinet, military or any officer or employee of the executive branch, but generally has no power to dismiss or give orders to judges.
* The power to [pardon](http://en.wikipedia.org/wiki/Pardon) or [commute](http://en.wikipedia.org/wiki/Commutation_of_sentence) sentences of convicted criminals is often in the hands of the heads of state in governments that separate their legislative and executive branches of government.

Countries that feature a presidential system of government are not the exclusive users of the title of President or the republican form of government. For example, a [dictator](http://en.wikipedia.org/wiki/Dictator), who may or may not have been popularly or legitimately elected may be and often is called a president. Likewise, many parliamentary democracies are republics and have presidents, but this position is largely ceremonial; notable examples include [Germany](http://en.wikipedia.org/wiki/Germany), [India](http://en.wikipedia.org/wiki/India), [Ireland](http://en.wikipedia.org/wiki/Republic_of_Ireland), [Israel](http://en.wikipedia.org/wiki/Israel) and [Portugal](http://en.wikipedia.org/wiki/Portugal).

A parliamentary system is a system of government in which the [ministers](http://en.wikipedia.org/wiki/Minister_%28government%29) of the [executive branch](http://en.wikipedia.org/wiki/Executive_branch) get their democratic legitimacy from the [legislature](http://en.wikipedia.org/wiki/Legislature) and are accountable to that body, such that the executive and[legislative branches](http://en.wikipedia.org/wiki/Legislative_branch) are intertwined.

* The [Westminster system](http://en.wikipedia.org/wiki/Westminster_system) is usually found in [Commonwealth of Nations](http://en.wikipedia.org/wiki/Commonwealth_of_Nations), although it is not universal within nor exclusive to Commonwealth countries. These parliaments tend to have a more adversarial style of debate and the plenary session of parliament is more important than committees. Some parliaments in this model are elected using a [plurality voting system](http://en.wikipedia.org/wiki/Plurality_voting_system) (first past the post), such as the[United Kingdom](http://en.wikipedia.org/wiki/United_Kingdom), [Canada](http://en.wikipedia.org/wiki/Canada), and [India](http://en.wikipedia.org/wiki/India), while others use [proportional representation](http://en.wikipedia.org/wiki/Proportional_representation), such as [Ireland](http://en.wikipedia.org/wiki/Ireland) and[New Zealand](http://en.wikipedia.org/wiki/New_Zealand). The [Australian House of Representatives](http://en.wikipedia.org/wiki/Australian_House_of_Representatives) is elected using [instant-runoff voting](http://en.wikipedia.org/wiki/Instant-runoff_voting) while the[Senate](http://en.wikipedia.org/wiki/Australian_Senate) is elected using proportional representation through [single transferable vote](http://en.wikipedia.org/wiki/Single_transferable_vote). Regardless of which system is used, the voting systems tend to allow the voter to vote for a named candidate rather than a [closed list](http://en.wikipedia.org/wiki/Closed_list).
* [Western European parliamentary model](http://en.wikipedia.org/wiki/Western_European_parliamentary_model) (e.g., [Spain](http://en.wikipedia.org/wiki/Spain), [Germany](http://en.wikipedia.org/wiki/Germany)) tend to have a more consensual debating system, and usually have semi-cyclical debating chambers. Consensus systems have more of a tendency to use [proportional representation](http://en.wikipedia.org/wiki/Proportional_representation) with [open party lists](http://en.wikipedia.org/wiki/Open_party_list) than the Westminster Model legislatures. The committees of these Parliaments tend to be more important than the plenary chamber. A specific example is sometimes called the [West German](http://en.wikipedia.org/wiki/West_Germany) Model since its earliest exemplar in its final form was in the[Bundestag](http://en.wikipedia.org/wiki/Bundestag) of West Germany (which became the Bundestag of Germany upon the [absorption of the GDR by the FRG](http://en.wikipedia.org/wiki/German_reunification)). Unlike in Germany however, some West European countries' parliaments (e.g., the [Netherlands](http://en.wikipedia.org/wiki/Parliament_of_the_Netherlands) and [Sweden](http://en.wikipedia.org/wiki/Parliament_of_Sweden)) implement the principle of [dualism](http://en.wikipedia.org/wiki/Dualism_%28politics%29)as a form of separation of powers. In countries using this system, Members of Parliament have to resign their place in Parliament upon being appointed (or elected) minister. However, ministers in those countries usually actively participate in parliamentary debates - the main difference being their inability to vote.

There also exists a Hybrid Model, the [semi-presidential system](http://en.wikipedia.org/wiki/Semi-presidential_system), drawing on both presidential systems and parliamentary systems, for example the [French Fifth Republic](http://en.wikipedia.org/wiki/French_Fifth_Republic).

Implementations of the parliamentary system can also differ on whether the government needs the explicit approval of the parliament to form, rather than just the absence of its disapproval, and under what conditions (if any) the government has the right to dissolve the parliament, like Jamaica and many others.

A Parliamentary system may consist of two styles of [Chambers of Parliament](http://en.wikipedia.org/wiki/Parliamentary_chamber) one with two chambers (or houses): an elected lower house, and an upper house or Senate which may be appointed or elected by a different mechanism from the lower house. This style of two houses is called [bicameral system](http://en.wikipedia.org/wiki/Bicameral_system). Legislatures with only one house are known as [unicameral system](http://en.wikipedia.org/wiki/Unicameralism).

Parliamentarianism may also be for governance in [local governments](http://en.wikipedia.org/wiki/Local_government). An example is the city of [Oslo](http://en.wikipedia.org/wiki/Oslo), which has an executive council (Byråd) as a part of the parliamentary system.

A unitary state is a [sovereign state](http://en.wikipedia.org/wiki/Sovereign_state) governed as one single unit in which the [central government](http://en.wikipedia.org/wiki/Central_government) is supreme and any[administrative divisions](http://en.wikipedia.org/wiki/Administrative_division) (subnational units) exercise only powers that their central [government](http://en.wikipedia.org/wiki/Government) chooses to delegate. Many states in the world have a unitary [system of government](http://en.wikipedia.org/wiki/Form_of_government).

Unitary states are contrasted with [federal states](http://en.wikipedia.org/wiki/Federation) (federations):

* In a unitary state, subnational units are created and abolished and their powers may be broadened and narrowed, by the central government. Although [political power](http://en.wikipedia.org/wiki/Political_power) in unitary states may be delegated through [devolution](http://en.wikipedia.org/wiki/Devolution) to [local government](http://en.wikipedia.org/wiki/Local_government) by[statute](http://en.wikipedia.org/wiki/Statute), the central government remains supreme; it may abrogate the acts of devolved governments or curtail their powers.
	+ The [United Kingdom](http://en.wikipedia.org/wiki/United_Kingdom) is an example of a unitary state. [Scotland](http://en.wikipedia.org/wiki/Scotland), [Wales](http://en.wikipedia.org/wiki/Wales), and [Northern Ireland](http://en.wikipedia.org/wiki/Northern_Ireland) which, along with [England](http://en.wikipedia.org/wiki/England)are the four [constituent](http://en.wikipedia.org/wiki/Constituent_country) [countries of the United Kingdom](http://en.wikipedia.org/wiki/Countries_of_the_United_Kingdom), have a degree of autonomous devolved power – the [Scottish Government](http://en.wikipedia.org/wiki/Scottish_Government) and [Scottish Parliament](http://en.wikipedia.org/wiki/Scottish_Parliament) in Scotland, the [Welsh Government](http://en.wikipedia.org/wiki/Welsh_Government) and [National Assembly for Wales](http://en.wikipedia.org/wiki/National_Assembly_for_Wales) in Wales, and the [Northern Ireland Executive](http://en.wikipedia.org/wiki/Northern_Ireland_Executive) and [Northern Ireland Assembly](http://en.wikipedia.org/wiki/Northern_Ireland_Assembly) in Northern Ireland. But such devolved power is only delegated by [Britain's central government](http://en.wikipedia.org/wiki/Her_Majesty%27s_Government), more specifically by the [Parliament of the United Kingdom](http://en.wikipedia.org/wiki/Parliament_of_the_United_Kingdom),[clarification needed](http://en.wikipedia.org/wiki/Wikipedia%3APlease_clarify) which is supreme under the doctrine of [parliamentary supremacy](http://en.wikipedia.org/wiki/Parliamentary_sovereignty). Further, the devolved governments cannot challenge the[constitutionality](http://en.wikipedia.org/wiki/Constitution_of_the_United_Kingdom) of [acts of Parliament](http://en.wikipedia.org/wiki/Acts_of_Parliament_in_the_United_Kingdom), and the powers of the devolved governments can be revoked or reduced by the central government (the Parliament with a government comprising the [Cabinet](http://en.wikipedia.org/wiki/Cabinet_of_the_United_Kingdom), headed by the [Prime Minister](http://en.wikipedia.org/wiki/Prime_Minister_of_the_United_Kingdom)). For example, the Northern Ireland Assembly has been suspended four times, with its powers reverting to the central government's [Northern Ireland Office](http://en.wikipedia.org/wiki/Northern_Ireland_Office).
* In [federal](http://en.wikipedia.org/wiki/Federalism) states, by contrast, [states](http://en.wikipedia.org/wiki/State_%28administrative_division%29) or other subnational units share sovereignty with the central government, and the states comprising the federation have an existence and power functions that cannot be unilaterally changed by the central government. In some cases, such as in the [United States](http://en.wikipedia.org/wiki/United_States), it is the federal government that has only those powers expressly delegated to it.
	+ An example of a federal state is the [United States](http://en.wikipedia.org/wiki/United_States); under the [United States Constitution](http://en.wikipedia.org/wiki/United_States_Constitution), power is shared between the [federal government of the United States](http://en.wikipedia.org/wiki/Federal_government_of_the_United_States) and the [U.S. states](http://en.wikipedia.org/wiki/U.S._state). Many federal states also have unitary lower levels of government; while the United States is federal, the states themselves are unitary under [Dillon's Rule](http://en.wikipedia.org/wiki/Dillon%27s_Rule) – [counties](http://en.wikipedia.org/wiki/Counties_in_the_United_States) and[municipalities](http://en.wikipedia.org/wiki/Municipality) have only the authority granted to them by the [state governments](http://en.wikipedia.org/wiki/State_governments_of_the_United_States) by the [state constitution](http://en.wikipedia.org/wiki/State_constitution) or [legislative act](http://en.wikipedia.org/wiki/State_legislature_%28United_States%29).

Devolution (like federation) may be symmetrical, with all subnational units having the same powers and status, or asymmetric, with regions varying in their powers and status.

Democracy is a form of government in which all people have an equal say in the decisions that affect their lives. Ideally, this includes equal (and more or less direct) participation in the proposal, development and passage of legislation into law. It can also encompass social, economic and cultural conditions that enable the free and equal practice of [political self-determination](http://en.wikipedia.org/wiki/Political_freedom). The term comes from the [Greek](http://en.wikipedia.org/wiki/Greek_language): δημοκρατία – (dēmokratía) "rule of the people", which was coined from δῆμος (dêmos) "people" and κράτος (Kratos) "power", in the middle of the 5th-4th century BC to denote the [political systems](http://en.wikipedia.org/wiki/Political_systems) then existing in some Greek city-states, notably [Athens](http://en.wikipedia.org/wiki/Classical_Athens) following a popular uprising in [508 BC](http://en.wikipedia.org/wiki/508_BC).

According to some theories of democracy, [popular sovereignty](http://en.wikipedia.org/wiki/Popular_sovereignty) is the founding principle of such a system. However, the democratic principle has also been expressed as "the freedom to call something into being which did not exist before, which was not given… and which therefore, strictly speaking, could not be known." This type of freedom, which is connected to human "natality," or the capacity to begin anew, sees democracy as "not only a political system… but an ideal, an aspiration, really, intimately connected to and dependent upon a picture of what it is to be human of what it is a human should be to be fully human."

While there is no specific, universally accepted definition of 'democracy', equality and freedom have both been identified as important characteristics of democracy since ancient times. These principles are reflected in all citizens being [equal before the law](http://en.wikipedia.org/wiki/Equality_before_the_law) and having equal access to legislative processes. For example, in a representative democracy, every vote has equal weight, no unreasonable restrictions can apply to anyone seeking to become a representative, and the freedom of its citizens is secured by legitimized rights and liberties which are generally protected by a constitution.

There are several varieties of democracy, some of which provide better representation and more freedom for their citizens than others.However, if any democracy is not structured so as to prohibit the government from excluding the people from the legislative process, or any branch of government from altering the [separation of powers](http://en.wikipedia.org/wiki/Separation_of_powers) in its own favor, then a branch of the system can accumulate too much power and destroy the democracy. [Representative Democracy](http://en.wikipedia.org/wiki/Representative_Democracy), [Consensus Democracy](http://en.wikipedia.org/wiki/Consensus_Democracy), and [Deliberative Democracy](http://en.wikipedia.org/wiki/Deliberative_Democracy) are all major examples of attempts at a form of government that is both practical and responsive to the needs and desires of citizens.

Many people use the term "democracy" as shorthand for [liberal democracy](http://en.wikipedia.org/wiki/Liberal_democracy), which may include elements such as [political pluralism](http://en.wikipedia.org/wiki/Political_pluralism); [equality before the law](http://en.wikipedia.org/wiki/Rule_of_law); the [right to petition](http://en.wikipedia.org/wiki/Right_to_petition) elected officials for redress of grievances; [due process](http://en.wikipedia.org/wiki/Due_process); [civil liberties](http://en.wikipedia.org/wiki/Civil_liberties); [human rights](http://en.wikipedia.org/wiki/Human_rights); and elements of [civil society](http://en.wikipedia.org/wiki/Civil_society) outside the government. In the United States, separation of powers is often cited as a central attribute, but in other countries, such as the United Kingdom, the dominant principle is that of [parliamentary sovereignty](http://en.wikipedia.org/wiki/Parliamentary_sovereignty) (though in practice [judicial independence](http://en.wikipedia.org/wiki/Judicial_independence) is generally maintained). In other cases, "democracy" is used to mean [direct democracy](http://en.wikipedia.org/wiki/Direct_democracy). Though the term "democracy" is typically used in the context of a [political state](http://en.wikipedia.org/wiki/State_%28polity%29), the principles are applicable to private [organizations](http://en.wikipedia.org/wiki/Organization) and other groups as well.

[Majority rule](http://en.wikipedia.org/wiki/Majority_rule) is often listed as a characteristic of democracy. However, it is also possible for a [minority](http://en.wikipedia.org/wiki/Minority) to be oppressed by a "[tyranny of the majority](http://en.wikipedia.org/wiki/Tyranny_of_the_majority)" in the absence of governmental or constitutional protections of individual or group rights. An essential part of an "ideal" representative democracy is competitive [elections](http://en.wikipedia.org/wiki/Elections) that are fair both substantively and procedurally. Furthermore, [freedom of political expression](http://en.wikipedia.org/wiki/Freedom_%28political%29), [freedom of speech](http://en.wikipedia.org/wiki/Freedom_of_speech), and [freedom of the press](http://en.wikipedia.org/wiki/Freedom_of_the_press) are considered to be essential, so that citizens are adequately informed and able to vote according to their own best interests as they see them. It has also been suggested that a basic feature of democracy is the capacity of individuals to participate freely and fully in the life of their society.

Democracy has its formal origins in [Ancient Greece](http://en.wikipedia.org/wiki/Ancient_Greece), but democratic practices are evident in earlier societies including Mesopotamia, Phoenicia and India. Other cultures since Greece have significantly contributed to the evolution of democracy such as [Ancient Rome](http://en.wikipedia.org/wiki/Ancient_Rome),Europe, and North and South America. The concept of representative democracy arose largely from ideas and institutions that developed during the [European Middle Ages](http://en.wikipedia.org/wiki/European_Middle_Ages) and the [Age of Enlightenment](http://en.wikipedia.org/wiki/Age_of_Enlightenment) and in the [American](http://en.wikipedia.org/wiki/American_Revolution) and [French Revolutions](http://en.wikipedia.org/wiki/French_Revolution). Democracy has been called the "last form of government" and has spread considerably across the globe. The [right to vote](http://en.wikipedia.org/wiki/Right_to_vote) has been expanded in many jurisdictions over time from relatively narrow groups (such as wealthy men of a particular ethnic group), with [New Zealand](http://en.wikipedia.org/wiki/New_Zealand) the first nation to grant [universal suffrage](http://en.wikipedia.org/wiki/Universal_suffrage) for all its citizens in 1893. Democracy is often confused with the [republic](http://en.wikipedia.org/wiki/Republic) form of government.

An autocracy is a [form of government](http://en.wikipedia.org/wiki/Form_of_government) in which one person possesses unlimited power. The term autocrat is derived from the Greek αὐτοκρατία: αὐτός ("self") and κρατείν ("rule"), and may be translated as "one who rules by himself". It is distinct from [oligarchy](http://en.wikipedia.org/wiki/Oligarchy) ("rule by the few") and [democracy](http://en.wikipedia.org/wiki/Democracy) ("rule by the people"). Like "[despot](http://en.wikipedia.org/wiki/Despotism)", "[tyrant](http://en.wikipedia.org/wiki/Tyrant)" and "[dictator](http://en.wikipedia.org/wiki/Dictator)", "autocrat" is a [loaded word](http://en.wikipedia.org/wiki/Loaded_word) with a negative value judgment.

Autocracy and [totalitarianism](http://en.wikipedia.org/wiki/Totalitarianism) are related concepts. Autocracy is defined by one individual having unlimited [legislative](http://en.wikipedia.org/wiki/Legislation) and [executive](http://en.wikipedia.org/wiki/Executive_%28government%29) power, while totalitarianism extends to regulating every aspect of public and private life. Totalitarianism does not imply a single ruler, but extends to include absolute rule by any faction or class of elites who recognize no limit to their authority.

Autocracy differs from [military dictatorship](http://en.wikipedia.org/wiki/Military_dictatorship), as these often take the form of "collective presidencies" such as the South American [juntas](http://en.wikipedia.org/wiki/Military_junta). However, an autocracy may be totalitarian or be a military dictatorship.

The term [monarchy](http://en.wikipedia.org/wiki/Monarchy) also differs in that it emphasizes the hereditary characteristic, though some Slavic monarchs, specifically [Russian Emperors](http://en.wikipedia.org/wiki/Czar), included the title "autocrat" as part of their official styles. This usage originated in the [Byzantine Empire](http://en.wikipedia.org/wiki/Byzantine_Empire), where the term [autokratōr](http://en.wikipedia.org/wiki/Autokrator) was traditionally employed in Greek to translate the [Latin](http://en.wikipedia.org/wiki/Latin) [imperator](http://en.wikipedia.org/wiki/Imperator), and was used along with [Basileus](http://en.wikipedia.org/wiki/Basileus) to mean "emperor". This use remains current in the [modern Greek](http://en.wikipedia.org/wiki/Modern_Greek) language, where the term is used for any emperor, regardless of the actual power of the monarch. Historically, many monarchs [ruled autocratically](http://en.wikipedia.org/wiki/Absolute_monarchy) but eventually their power was diminished and dissolved with the introduction of [constitutions](http://en.wikipedia.org/wiki/Constitution) giving the people the power to make decisions for themselves through elected bodies of [government](http://en.wikipedia.org/wiki/Government).

The autocrat needs some kind of power structure to rule. Most historical autocrats depended on their [nobles](http://en.wikipedia.org/wiki/Nobles), the [military](http://en.wikipedia.org/wiki/Military), the [priesthood](http://en.wikipedia.org/wiki/Priesthood) or other elite groups. As such, it can be difficult to draw a clear line between historical autocracies and [oligarchies](http://en.wikipedia.org/wiki/Oligarchies).

Despotism is a [form of government](http://en.wikipedia.org/wiki/Form_of_government) in which a single entity, called the despot, rules with absolute power. That entity may be an individual, as in an [autocracy](http://en.wikipedia.org/wiki/Autocracy), or it may be a group, as in an [oligarchy](http://en.wikipedia.org/wiki/Oligarchy). The word despotism means to "rule in the fashion of a despot" and should not be confused with "despot", an individual.

Despot comes from the Greek [despotes](http://en.wikipedia.org/wiki/Despotes), which roughly means "master" or "one with power", and it has been used to translate a wide variety of titles and positions. It was used to describe the unlimited power and authority of the [Pharaohs](http://en.wikipedia.org/wiki/Pharaoh) of Egypt, employed in the [Byzantine](http://en.wikipedia.org/wiki/Byzantine) court as a title of nobility, used by the rulers of Byzantine vassal states, and adopted as a title of the Byzantine Emperors. Thus, despot is found to have different meanings and interpretations at various times in history and can not be described by a single definition. This is similar to the other Greek titles [basileus](http://en.wikipedia.org/wiki/Basileus) and [autokrator](http://en.wikipedia.org/wiki/Autokrator), which, along with despot, have been used at various times to describe everything from a local chieftain to a simple ruler, king or emperor.

Colloquially, despot has been applied pejoratively to a person, particularity a head of state or government, who abuses his power and authority to oppress his people, subjects or subordinates. In this sense, it is similar to the pejorative connotations that have likewise arisen with the term [tyrant](http://en.wikipedia.org/wiki/Tyrant). Dictator has also developed nearly similar pejorative connotations, though despot and tyrant tend to stress cruelty and even enjoyment therefrom, while dictator tends to imply more harshness or unfair implementation of law.

1. **A legal state and a civil society**

Civil society is composed of the totality of voluntary social relationships, civic and social organizations, and institutions that form the basis of a functioning [society](http://en.wikipedia.org/wiki/Society), as distinct from the force-backed structures of a [state](http://en.wikipedia.org/wiki/State_%28polity%29) (regardless of that state's political system), the commercial institutions of the [market](http://en.wikipedia.org/wiki/Market), and private criminal organizations like the [mafia](http://en.wikipedia.org/wiki/Mafia). Together, state, market, civil society constitute the entirety of a society, and the relations between these components determine the character of a society and its structure.

There is no generally accepted definition of civil society. The [London School of Economics](http://en.wikipedia.org/wiki/London_School_of_Economics) Centre for Civil Society's working definition is one illustrative example:

Civil society refers to the arena of uncoerced [collective action](http://en.wikipedia.org/wiki/Collective_action) around shared [interests](http://en.wikipedia.org/wiki/Asset), purposes and [values](http://en.wikipedia.org/wiki/Value_%28personal_and_cultural%29). In theory, its institutional forms are distinct from those of the [state](http://en.wikipedia.org/wiki/State_%28polity%29), and [market](http://en.wikipedia.org/wiki/Market), though in practice, the boundaries between state, civil society, and market are often complex, blurred and negotiated. Civil society commonly embraces a diversity of spaces, actors and institutional forms, varying in their degree of formality, autonomy and power. Civil societies are often populated by organizations such as registered charities, development non-governmental organizations, community groups, women's organizations, faith-based organizations, professional associations, [trade unions](http://en.wikipedia.org/wiki/Trade_union), self-help groups, [social movements](http://en.wikipedia.org/wiki/Social_movement), business associations, coalitions and advocacy groups.

Definitions often run into difficulty when they are applied universally across social and cultural divides. As part of their research on the state of civil society in over 50 countries around the world, CIVICUS: World Alliance for Citizen Participation, has adopted the following definition as means of dealing with this issue "the arena, outside of the family, the state, and the market where people associate to advance common interests."

Rechtsstaat ([German](http://en.wikipedia.org/wiki/German_language): [Rechtsstaat](http://de.wikipedia.org/wiki/Rechtsstaat)) is a concept in [continental European](http://en.wikipedia.org/wiki/Continental_Europe) legal thinking, originally borrowed from [German](http://en.wikipedia.org/wiki/Germany) [jurisprudence](http://en.wikipedia.org/wiki/Jurisprudence), which can be translated as "legal state", "state of law", "state of justice", or "state of rights". It is a "constitutional [state](http://en.wikipedia.org/wiki/State_%28polity%29)" in which the exercise of [governmental power](http://en.wikipedia.org/wiki/Government) is constrained by the [law](http://en.wikipedia.org/wiki/Law), and is often tied to the [Anglo-American](http://en.wikipedia.org/wiki/Anglo-America)concept of the [rule of law](http://en.wikipedia.org/wiki/Rule_of_law).

In a Rechtsstaat, the power of the state is limited in order to protect [citizens](http://en.wikipedia.org/wiki/Citizen) from the arbitrary exercise of [authority](http://en.wikipedia.org/wiki/Authority). In a Rechtsstaat the citizens share legally based [civil liberties](http://en.wikipedia.org/wiki/Civil_liberties) and they can use the [courts](http://en.wikipedia.org/wiki/Court). A country cannot be a [liberal democracy](http://en.wikipedia.org/wiki/Liberal_democracy) without first being a Rechtsstaat.

The most important principles of the Rechtsstaat are:

* The state based on the supremacy of national constitution and exercises coercion and guarantees the safety and [constitutional rights](http://en.wikipedia.org/wiki/Constitutional_rights) of its citizens
* [Civil society](http://en.wikipedia.org/wiki/Civil_society) is equal partner to the state (the [Constitution of the Republic of Lithuania](http://en.wikipedia.org/wiki/Constitution_of_the_Republic_of_Lithuania) describes the Lithuanian nation as "striving for an open, just, and harmonious civil society and State under the rule of law (Legal State)")
* [Separation of powers](http://en.wikipedia.org/wiki/Separation_of_powers), with the executive, legislative and judicative branches of government limiting each other's power and providing for checks and balances
* The [judicature](http://en.wikipedia.org/wiki/Judicature) and the [executive](http://en.wikipedia.org/wiki/Executive_branch) are bound by law (no acting against the law), and the legislature is bound by constitutional principles
* Both the [legislature](http://en.wikipedia.org/wiki/Legislature) and democracy itself is bound by elementary constitutional rights and principles
* [Transparency](http://en.wikipedia.org/wiki/Transparency_%28social%29) of state acts and the requirement of providing a reasoning for all state acts
* Review of state decisions and state acts by independent organs, including an appeal process
* Hierarchy of laws, requirement of clarity and definiteness
* Reliability of state actions, protection of past dispositions made in good faith against later state actions, prohibition of [retroactivity](http://en.wikipedia.org/wiki/Ex_post_facto_law)
* Principle of the [proportionality](http://en.wikipedia.org/wiki/Proportionality) of state action
* [Monopoly of the legitimate use of force](http://en.wikipedia.org/wiki/Monopoly_of_the_legitimate_use_of_force)

**Theme 2. Fundamentals of theory of law.**

Plan

1. Anotion, attributes, and functions of law.
2. Sources and a system of law. A notion and a structure of a legal rule.
3. A notion, attributes and a structure of legal relations.
4. A notion and types of legal conduct. A notion, attributes, composition and types of offences.
5. A notion, aim, functions, grounds (reasons) and types of legal responsibility.

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**1. A notion, attributes, and functions of law.**

Positive law – [John Austin](http://en.wikipedia.org/wiki/John_Austin_%28legal_philosopher%29)'s [utilitarian](http://en.wikipedia.org/wiki/Utilitarianism) answer was that law is "commands, backed by threat of sanctions, from a sovereign, to whom people have a habit of obedience".

[Natural lawyers](http://en.wikipedia.org/wiki/Natural_law) on the other side, such as [Jean-Jacques Rousseau](http://en.wikipedia.org/wiki/Jean-Jacques_Rousseau), argue that law reflects essentially moral and unchangeable laws of nature. The concept of "natural law" emerged in ancient [Greek philosophy](http://en.wikipedia.org/wiki/Greek_philosophy) concurrently and in entanglement with the notion of justice, and re-entered the mainstream of [Western culture](http://en.wikipedia.org/wiki/Western_culture) through the writings of [Thomas Aquinas](http://en.wikipedia.org/wiki/Thomas_Aquinas).

Natural law is part of philosophy, rather than the positive law, which is a separate and special science, interacting with philosophy, sociology, psychology and politics.

* Law is established or sanctioned by the state (that is officially approved by the state or the population in the referendum);
* Law is mandatory, it is the only system of regulations that are binding for the entire population residing in the territory of a State;
* Law - a system of rules, regulations that in some way subordinate to and interact;
* Law as a general rule - this means that law regulates the behavior is not any particular person, and anyone who comes in those relationships that governed him;
* Law is formally defined, that is, they articulate the rules and fixed by the specific regulations and other legal sources;
* Law is protected by the state - if legal rules are not met voluntarily, the state uses coercion.

Law as a social phenomenon affects the social relations of people and therefore has a social value. The social value of law lies in the fact that by law provides a general and stable order in social relations. Essence and social purpose of law manifested in its functions.

Functions of law - are the main directions of the positive impact of law on social relations and human behaviour, social development.

There are the following types of functions of law: general social and specially-legal.

General social functions:

1. Humanistic - protection of mankind.
2. Organizational - to organize the common efforts of people to achieve socially useful aims.
3. Educational - a feature of development of legal understanding among people.
4. Informational - to inform people about the will of the legislator.
5. Evaluation - a criterion of legality or illegality of certain decisions and actions.

Special legal features:

1. Regulatory - this function is performed by the power of legal sanctions on the person to provide her such a special behavior that would meet the public legal order, based on existing legal norms.
2. Security - a feature that is aimed at protecting the system of social relations, to protect their integrity on the part of offenders, that is to protect the rights and freedoms of individuals and society as a whole.

**2. Sources and a system of law. A notion and a structure of a legal rule.**

Basic sources of law are:

1. A legal custom;
2. A legal precedent;
3. A normative agreement;
4. A legal document (a legislative act).

Law is a [system](http://en.wikipedia.org/wiki/System) of rules and guidelines, usually enforced through a set of [institutions](http://en.wikipedia.org/wiki/Institution).It shapes [politics](http://en.wikipedia.org/wiki/Politics), [economics](http://en.wikipedia.org/wiki/Economics) and[society](http://en.wikipedia.org/wiki/Society) in numerous ways and serves as a social mediator of relations between people. [Contract law](http://en.wikipedia.org/wiki/Contract_law) regulates everything from buying a bus ticket to trading on [derivatives markets](http://en.wikipedia.org/wiki/Derivative_%28finance%29). [Property law](http://en.wikipedia.org/wiki/Property_law) defines rights and obligations related to the transfer and title of[personal](http://en.wikipedia.org/wiki/Personal_property) and [real property](http://en.wikipedia.org/wiki/Real_property).  If the harm is criminalised in legislation, [criminal law](http://en.wikipedia.org/wiki/Criminal_law) offers means by which the state can prosecute the perpetrator. [Constitutional law](http://en.wikipedia.org/wiki/Constitutional_law) provides a framework for the creation of law, the protection of[human rights](http://en.wikipedia.org/wiki/Human_rights) and the election of political representatives. [Administrative law](http://en.wikipedia.org/wiki/Administrative_law) is used to review the decisions of government agencies, while [international law](http://en.wikipedia.org/wiki/International_law) governs affairs between [sovereign states](http://en.wikipedia.org/wiki/Sovereign_state) in activities ranging from [trade](http://en.wikipedia.org/wiki/Trade) to environmental regulation or military action. Procedural Law regulates the process, the procedure to protect their rights in court by individuals and legal entities, the state (criminal procedure law, civil procedural law, corrective labor, economic and procedure, international law, etc.).

Legal systems elaborate [rights](http://en.wikipedia.org/wiki/Right) and responsibilities in a variety of ways. A general distinction can be made between [civil law](http://en.wikipedia.org/wiki/Civil_law_%28legal_system%29) [jurisdictions](http://en.wikipedia.org/wiki/Jurisdiction), which codify their laws, and [common law](http://en.wikipedia.org/wiki/Common_law) systems, where judge made law is not consolidated. In some countries, [religion](http://en.wikipedia.org/wiki/Religious_law) forms the law.

In a typical [democracy](http://en.wikipedia.org/wiki/Democracy), the central institutions for interpreting and creating law are the three main branches of [government](http://en.wikipedia.org/wiki/Government), namely an impartial [judiciary](http://en.wikipedia.org/wiki/Judiciary), a democratic [legislature](http://en.wikipedia.org/wiki/Legislature), and an accountable [executive](http://en.wikipedia.org/wiki/Executive_%28government%29). To implement and enforce the law and provide services to the public, a government's bureaucracy, the military and police are vital. While all these organs of the state are creatures created and bound by law, an independent [legal profession](http://en.wikipedia.org/wiki/Lawyer) and a vibrant [civil society](http://en.wikipedia.org/wiki/Civil_society) inform and support their progress.

Civil law is the legal system used in most countries around the world today. In civil law the sources recognised as authoritative are, primarily, legislation especially [codifications](http://en.wikipedia.org/wiki/Codification_%28law%29) in [constitutions](http://en.wikipedia.org/wiki/Constitution) or [statutes](http://en.wikipedia.org/wiki/Statute) passed by government and [custom](http://en.wikipedia.org/wiki/Custom_%28law%29). Modern civil law systems essentially derive from the legal practice of the th-century [Eastern Roman Empire](http://en.wikipedia.org/wiki/Byzantine_Empire) whose texts were rediscovered by late [medieval](http://en.wikipedia.org/wiki/Middle_Ages) Western Europe. Among the laws are different legal acts of force. Constitution - a fundamental law of the state, which is the rule in the system of regulations. Ordinary laws - adopted within the legislative process, regulate the most important aspects of social life. Subordinate regulations - written documents issued by authorized persons, adopted under and pursuant to law, which contain rules of conduct of a general nature, provided by the state.

Formalistic definition of a legal rule:

Legal rule - is the official, formally defined, mandatory rules of conduct established by the state. The rules of law have a logical structure and consist of hypotheses and dispositions.

The hypothesis - is that part of the legal norms, which are expressed in the circumstances and conditions under which legal rights and obligations can be implemented. Disposition - is part of the rule in which the normal course of behavoure - the right or the onligation to behave - is reflected. Some rules of law contain also a sanction for violation thereof.

**3. A notion, attributes and a structure of legal relations.**

Legal relations are public relations, which are regulated by the law, their participants have subjective rights and legal duties, which are guaranteed by a state.

Basic attributes of the legal relations are:

1) arise up on the basis of legal rules;

2) have sides (parties) that have subjective rights and legal duties;

3) legal relations are the type of public relations of a natural person or a legal entity (person), organizations and communities;

4) a state controls and guarantees realization of subjective rights and observance of legal duties in legal relations.

There are three elements of the structure of legal relations:

1) a subject;

2) an object;

3) contents of legal relations.

**4. A notion and types of legal conduct. A notion, attributes, composition and types of offences.**

Legal conduct is the acts of individual or collective subjects, which are controlled by their consciousness and will, have a social value, are foreseen by the legal rules, have legal consequences.

Legal conduct is divided into legitimate (good) and illegitimate (wrong or bad).

Legitimate conduct is divided into: legal activity, ordinary legitimate conduct, conformal conduct, marginal conduct.

Illegitimate (wrong) conduct is conduct (behavior) when a person breaks the law.

 An offence is a publicly dangerous or harmful, guilty, wrong act of a subject, who has legal personality, this type of conduct breaks the legal ruls.

An offence has such attributes:

* this is a publicly dangerous or harmful act;
* this is an illegitimate act (action or inactivity), which conflicts with the rule of law;
* this is a guilty act, which foresees guilt of a person, who has done an offence;
* this is a legally punishable act, which foresees legal responsibility for violation of the legal rule;
* causal connection between an offence and consequences. It is impossible to accuse a person in an offence, if there is no such a connection.

There two types of offences:

* misconducts;
* crimes.

An offence has a composition of an offence, which includes such elements:

* an object of an offence;
* an objective side of an offence;
* a subject of an offence;
* a subjective side of an offence.

**5. A notion, aim, functions, grounds (reasons) and types of legal liability.**

Liability is a duty of a subject to be responsible for his or her legitimate or illegitimate conduct.

Legal responsibility is divided into positive (perspective) and negative (retrospective).

Negative (retrospective) legal responsibility is consequences for an offence.

There are such types of negative (retrospective) legal responsibility: criminal, administrative, civil, constitutional, disciplinary, property liability of workers, international, etc.

Functions of legal responsibility are: preventive, informative, educational, repressive, compensative.

Legal grounds (reasons) of legal responsibility are conditions at presence of which it is possible to punish an offender. They are:

1. presence of a legal rule that foresees a composition of an offence;
2. legal fact;
3. legal personality of a subject of an offence;
4. presence of a legal document about an offender’s responsibility that entered into legal force.

**Theme 4. Fundamentals of Constitutional Law of Ukraine**.

Plan

1. The Constitution of Ukraine.
2. Constitutional rights, freedoms and duties of citizens of Ukraine.
3. Citizenship of Ukraine.
4. Elections. Electoral systems.
5. Referendum.
6. 1. Legislative power of Ukraine, legal status of a people's deputy.
7. 2. Executive power of Ukraine.
8. 3. Legal status of the President of Ukraine.
9. 4. Judicial power of Ukraine, legal status of a judge.
10. 5. Local-self government.

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1. **The Constitution of Ukraine.**

The Constitution of Ukraine is the very important historical and political document, in which state sovereignty of Ukraine was legally determined. As a legal act the Constitution is written, unitary constitution.

The Constitution of Ukraine (date of Entry into Force June 28, 1996) was accepted by the parliament of Ukraine that is called the Verkhovna Rada of Ukraine.

The constitution of Ukraine has a structure. It consists of the preamble, 15 chapters (161 articles). According to the preamble the Constitution is accepted by the Verkhovna Rada of Ukraine with the aim to develop the democratic, legal and social state.

According to the Constitution, Ukraine is a sovereign and independent, democratic, social and legal state. Ukraine is a unitary state. Ukraine is a republic.

According to Article 3 a human being, his or her life and health, honor and dignity, inviolability and security are recognized as the highest social value in Ukraine.

State power in Ukraine is exercised on the principles of its division into the legislative, executive and judicial power.

The Constitution of Ukraine has the highest legal force. Laws and other normative and legal acts are adopted on the basis of the Constitution of Ukraine and should conform to it.

The state language of Ukraine is the Ukrainian language. The Constitution guarantees free development, use and protection of the Russian and other languages of national minorities in Ukraine.

According to the Constitution, bodies of state power, bodies of local self-government, as well as their officials must be obliged to act only on the grounds, within the limits of authority, and in the manner envisaged by the Constitution and laws of Ukraine.

The state symbols of Ukraine are:

* the State Flag of Ukraine;
* the State Coat of Arms of Ukraine;
* the State Anthem of Ukraine.

The capital of Ukraine is Kyiv.

The Ukrainian administrative and territorial system is made up of: the Crimean Autonomous Republic, regions, cities, districts, settlements and villages.

The Crimean Autonomous Republic is the integral part of Ukraine. The Crimean Autonomous Republic has its own Constitution of the Crimean Autonomous Republic, which is adopted by the Verkhovna Rada of the Crimean Autonomous Republic and approved by the Verkhovna Rada of Ukraine.

1. **Constitutional rights, freedoms and duties of citizens of Ukraine.**

Women and men have equal possibilities in public political and cultural activity, in gaining of education, in labour and reward for it.

Human and civil rights and freedoms are protected by the court. Everyone has the right to appeal for the protection of his or her rights to the Authorized Human Rights Representative of the Verkhovna Rada of Ukraine.

According to Article 58, laws and other normative and legal acts have no retroactive force, except for cases, when they mitigate or exclude responsibility of a person. Nobody can be responsible for actions, which were not recognized as violations by the law at the time when they were undertaken.

Article 62 specifies the principle of the presumption of innocence. It means that a person is not guilty and cannot be subjected of criminal responsibility until his or her guilt is proven according to the legal procedure and established by the convicting sentence (verdict) of a court.

The Constitution guarantees to each person:

* inalienable right to life;
* the right to freedom, personal inviolability and security of residence;
* privacy of mail, telephone conversations, telegraph and other communication;
* non-interference in personal and family life;
* freedom of movement, free choice of the place of residence, the right to free departure from the territory of Ukraine, except for restrictions imposed by the law;
* the right to freedom of thought and speech;
* the right to own, use and dispose of their property and results of their intellectual and creative activity;
* the right to entrepreneurial activity, which is not prohibited by the law;
* the right to labor;
* the right to a standard of living sufficient for himself or herself and his or her family that includes adequate nutrition, clothing and housing;
* the right to an environment that is safe for life and health, and to compensation for damages inflicted through the violation of this right;
* the right to education, etc.

There are such duties of citizens of Ukraine:

**-** defence of the Motherland, independence and territorial integrity of Ukraine, respect for its State symbols shall be the duty of the citizens of Ukraine. Citizens perform military service in accordance with law (article 65);

**- e**veryone has to be obliged not to harm nature or cultural heritage, and to compensate for any damage he/she inflicted (article 66);

**- e**veryone has to be obliged to pay taxes and levies in accordance with the procedure and to the extent established by law (article 67);

**- e**veryone has to be obliged to strictly abide by the Constitution
of Ukraine and laws of Ukraine, and not to encroach upon the rights, freedoms, honour, or dignity of other persons. Ignorance of the law does not relieve from legal responsibility (article 68).

1. **Citizenship of Ukraine.**

The Constitution of Ukraine and the Law of Ukraine “On Citizenship of Ukraine” (Date of Entry into Force: March 1, 2001) are main legal documents about citizenship of Ukraine.

Citizenship must be understood as the special legal connection between a state and a person.

The legislation of Ukraine on citizenship is based on the following principles: 1) single citizenship - the citizenship of Ukraine that excludes the possibility of existence of citizenship of administrative territorial units of Ukraine; 2) prevention of statelessness; 3) impossibility to deprive the citizen of Ukraine of citizenship of Ukraine; 4) recognition of the right of the citizen of Ukraine to change citizenship; 5) impossibility to obtain and terminate the citizenship of Ukraine automatically; 6) equality of citizens of Ukraine before law irrespective of grounds, procedure and moment of obtaining the citizenship of Ukraine; 7) preservation of the citizenship of Ukraine regardless of place of residence of the citizen of Ukraine. Also a student must know about reasons to lose the citizenship of Ukraine and admit that the citizenship of Ukraine must be terminated, due to: 1) withdrawal of the citizenship of Ukraine. A citizen of Ukraine may withdraw of the citizenship of Ukraine upon his/her petition. If the child's parents withdraw of the citizenship of Ukraine, upon petition of one of them the child may withdraw of the citizenship of Ukraine together with the parents. The children from 14 to 18 years old may withdraw of the citizenship of Ukraine only with their consent; 2) loss of the citizenship of Ukraine; 3) reasons envisaged by the international agreements of Ukraine.

Conditions to get citizenship of Ukraine for a foreigner and tell that to obtain citizenship on the basis of the above reasons the person must: - recognize and observe the Constitution of Ukraine and the laws of Ukraine; - undertake to terminate foreign citizenship or not to have foreign citizenship; - live on legal basis on the territory of Ukraine during the last five years; - obtain permit to permanent residence in Ukraine; - speak state language or understand it in volume sufficient for communication. This condition may not apply to the persons who have physical impairments (blind, deaf, dumb); - have legal sources of existence. This condition must not apply to the persons who have refugee status or shelter in Ukraine.

1. **Elections. Electoral systems.**

Democracy in Ukraine is realized on the basis of the Constitution through the institutes of direct (referendum) or representative (elections) democracy.

In accordance with the Law of Ukraine “On Elections of People's Deputies of Ukraine” the candidates to the position of the People's Deputies of Ukraine must be nominated by the citizens of Ukraine through political parties (election blocks), as well as through self-nomination.

The total number of people's deputies is defined by the Constitution of Ukraine is 450 deputies.

A citizen of Ukraine who is 21 years old on the election day, has the right to vote and has resided in Ukraine for the last five years may be elected as deputy.

- regular (held due to termination of the constitutional term of authorities of the Verkhovna Rada of Ukraine and do not require a separate decision about their holding). Take place on the last Sunday of October of the last fifth year of authorities of the Verkhovna Rada of Ukraine.

The Law of Ukraine “On Elections of the President of Ukraine” establishes requirements to the candidate for the President of Ukraine, the procedure of nomination of the candidate and his/her election for the post. All candidates for the post of the President of Ukraine have equal rights and possibilities to take part in election campaign.

The President of Ukraine may be any citizen of Ukraine who is 35 years old on the election day, has the right to vote, speaks official language and resides in Ukraine for 10 years which precede elections. The same person may not be the President of Ukraine more than two terms subsequently (10 years).

The Law establishes the following types of elections of the President of Ukraine: regular, extraordinary and repeat.

Regular elections of the President of Ukraine must be held on the last Sunday of March of the fifth year of authorities of the President of Ukraine.

1. **Referendum.**

Referendum is voting of the people of a whole state (national referendum) or a definite part of the people (local referendum) with the purpose to decide the most important questions of the state and public life.

There are the following types of referenda:

* all-Ukrainian referenda (approval of the Constitution of Ukraine, its separate provisions and introducing amendments and changes into the Constitution of Ukraine; adoption, change or cancellation of the Laws of Ukraine or their separate provisions; making decisions which determine basic content of the Constitution of Ukraine, the Laws of Ukraine and other legal acts). The question about realization of Ukrainian people's right to self-determination and entering by Ukraine state federative and confederative formations or exit from them shall be decided exclusively by All-Ukrainian referendum;
* referenda of Republic Crimea (adoption, change or cancellation of decisions on the questions which are referred by legislation of Ukraine to authorities of Republic Crimea);
* local (within the limits of administrative territorial units) referenda (adoption, change or cancellation of decisions on the questions which are referred by legislation of Ukraine to authorities of local self-government of respective administrative territorial units and making decisions which determine content of resolutions of local Councils of people's deputies and their executive and administrative bodies). Exclusively by local referenda shall be solved issues on name or rename of village, settlement, city, district, oblast; questions about merger into one of one-name administrative territorial units which have common administrative center; questions about change of basic level of local self-government in the countryside, questions about reorganization or liquidation of communal kindergartens and also kindergartens created by former agricultural collectives and state economies.

The laws and other decisions adopted by referenda shall not be approved by bodies of state power.

In referendum may take part citizens of Ukraine who are 18 yeas old for the day of referendum and permanently reside on the respective territorial unit. Each citizen shall have one vote. Voting during referendum shall be secret: control over will of citizens is not allowed.

A new All-Ukrainian referendum on the questions that were brought to referendum before shall be held not earlier than 5 years afterwards, and local referendum - not earlier than a year since the day of previous referendum on these questions.

All-Ukrainian referendum is appointed by the Verkhovna Rada of Ukraine and local referenda - by the respective local councils of people's deputies. All-Ukrainian referendum is prepared and conducted from funds of republican budget and local referenda - at the expense of respective local budgets.

**6. Legislative power of Ukraine, legal status of a people's deputy.**

The Verkhovna Rada of Ukraine is the body of legislative power in Ukraine.

The constitutional composition of the Verkhovna Rada of Ukraine is four hundred and fifty People’s Deputies of Ukraine that are elected on the basis of a universal, equal and direct suffrage by way of a secret ballot.

The norms of the present law establish that People’s Deputies of Ukraine cannot have any other representative mandate, serve on the civil service, take other offices of profit, engage in other payable or business activity (except for teaching, scientific and creative activity), be included into the composition of a governing body or a supervisory council of a company or an organization that aims at obtaining profits.

In the instance when circumstances that violate the requirements related to the incompatibility of a Deputy mandate with other types of activities emerge, a People’s Deputy of Ukraine must terminate this activity or submit a personal application on abdicating the powers of a People’s Deputy of Ukraine within a twenty-day period from the date of the emergence of such circumstances.

People's Deputy of Ukraine has privilege of parliament.

People's Deputies are elected once in 5 years by way of a secret ballot on the basis of universal, equal and direct suffrage.

A citizen of Ukraine, who is 21 years old on the Election Day, has the right to vote and has resided in Ukraine for the last 5 years may be elected as a deputy.

According to the law, scheduled elections to the Verkhovna Rada of Ukraine must be held on the last Sunday of October of the fifth year of plenary powers of the Verkhovna Rada of Ukraine.

The Verkhovna Rada works in sessions. Every year, regular sessions of the Verkhovna Rada of Ukraine start on the first Tuesday of February and on the first Tuesday of September.

 The Parliament's sessions are open. A closed session is to be carried out by the decision of the majority from the constitutional composition of the Verkhovna Rada of Ukraine.

According to the present law, the right of the legislative initiative in the Verkhovna Rada of Ukraine belongs to the President of Ukraine, People’s Deputies of Ukraine and the Cabinet of Ministers of Ukraine.

The legal status of the Parliament - the Verkhovna Rada of Ukraine is determined by Chapter ІV of the Constitution of Ukraine. Article 85 determines the authority of the Verkhovna Rada. Article 92 specifies the list of issues regulated exclusively by laws. The main function of the Verkhovna Rada of Ukrain is to create the laws.

The parliament determines the principles of domestic and foreign policy, introduces amendments to the [Constitution of Ukraine](http://en.wikipedia.org/wiki/Constitution_of_Ukraine), adopts laws, approves the state [budget](http://en.wikipedia.org/wiki/Budget), designates elections of the [President of Ukraine](http://en.wikipedia.org/wiki/President_of_Ukraine), impeaches the president, declares war and peace, appoints the [Prime Minister of Ukraine](http://en.wikipedia.org/wiki/Prime_Minister_of_Ukraine), appoints or approves appointment of certain officials, appoints one-third of the [Constitutional Court of Ukraine](http://en.wikipedia.org/wiki/Constitutional_Court_of_Ukraine), elects judges for permanent terms, ratifies and denounces international treaties, and exercises certain control functions etc.

**7. Executive power of Ukraine.**

The Cabinet of Ministers of Ukraine (the Government of Ukraine) is the highest body in the system of bodies of executive power. The Cabinet of Ministers of Ukraine is responsible to the President of Ukraine and the Verkhovna Rada of Ukraine, under the control of, and accountable to the Verkhovna Rada of Ukraine within the limits stipulated by this Constitution.

The Cabinet of Ministers of Ukraine exercises executive power directly and through ministries, other central bodies of executive power, the Council of Ministers of the Autonomous Republic of Crimea, and local state administrations. The Cabinet of Ministers of Ukraine must guide, coordinate and oversee the activities of these bodies.

The Cabinet of Ministers of Ukraine consists of the Prime Minister of Ukraine, the First Vice-Prime Minister, Vice-Prime Ministers and Ministers.

The Prime Minister of Ukraine is appointed by the Verkhovna Rada of Ukraine upon the submission of proposal by the President of Ukraine. The candidature for the appointment as the Prime Minister of Ukraine is introduced by the President of Ukraine on the basis of a proposal of the coalition of deputy factions of the Verkhovna Rada of Ukraine formed in compliance with Article 83 of the Constitution of Ukraine, or of a deputy faction comprising the majority of the people's deputies of the constitutional membership of the Verkhovna Rada of Ukraine.

The Minister of Defence of Ukraine and the Minister of Foreign Affairs of Ukraine shall be appointed by the Verkhovna Rada of Ukraine upon the submission of proposal by the President of Ukraine, whereas other members of the Cabinet of Ministers of Ukraine are appointed by the Verkhovna Rada of Ukraine upon the submission of proposal by the Prime Minister of Ukraine. The Prime Minister of Ukraine manages the work of the Cabinet of Ministers of Ukraine and direct such work at the implementation of the Programme of Activity of the Cabinet of Ministers of Ukraine adopted by the Verkhovna Rada of Ukraine.

According to the Law, members of the Cabinet of Ministers of Ukraine can be Ukrainian nationals that have the right to vote and higher education and speak the official language. Individuals that have a criminal record that was not cancelled or lifted according to the procedure established by the law cannot be appointed to the positions of members of the Cabinet of Ministers of Ukraine.

Members of the Cabinet of Ministers of Ukraine have no right to combine their official activity with some other work (except for teaching, scientific and creative work in their non-working hours), to be part of the composition of the governing body or the supervisory council of an enterprise or an organization that aims at obtaining profits.

**8. Legal status of the President of Ukraine.**

The President of Ukraine is the head of the state. He is the guarantor of the state sovereignty, territorial integrity of Ukraine, adherence to the Constitution of Ukraine, human and civil rights and freedoms.

 The President is elected by Ukrainian citizens once in 5 years by secret ballot on the basis of universal, equal and direct suffrage.

Elections of the President of Ukraine must be held on the last Sunday of March on the fifth year of authorities of the President of Ukraine.

The President of Ukraine may be any citizen of Ukraine who is 35 years old on the Election Day, has the right to vote, speaks official language and has resided in Ukraine for 10 years which precede elections. The same person can not be the President of Ukraine more than two terms subsequently (10 years).

The President of Ukraine can not delegate his powers to other persons or bodies. The President of Ukraine signs the laws, which were accepted by the Verkhovna Rada of Ukraine.

**9. Judicial power of Ukraine, legal status of a judge.**

Justice in Ukraine must be administered exclusively by courts. It must not be allowed to delegate the functions of courts, as well as appropriate these functions by other bodies or officials.

In administering justice, a court must ensure the protection of human and civil rights and freedoms, rights and interests of legal entities and public and state interests, which are guaranteed by the Constitution of Ukraine and Ukrainian laws, on the basis of the rule of law.

Ukraine’s judicial system is made up of:

1) courts of general jurisdiction and

2) the Constitutional Court of Ukraine.

Courts of general jurisdiction form the unified system of courts. The Constitutional Court of Ukraine is the single body of constitutional jurisdiction in Ukraine. The judicial system ensures access to justice for every individual according to the procedure established by the Constitution of Ukraine and Ukrainian laws. Establishment of emergency and special courts must not be allowed. Judicial power must be exercised by way of administering justice in the form of civil, commercial, administrative, criminal, as well as constitutional legal proceedings. Legal proceedings must be undertaken by the Constitutional Court of Ukraine and courts of general jurisdiction.

The [Constitutional Court of Ukraine](http://en.wikipedia.org/wiki/Constitutional_Court_of_Ukraine) is a special body with authority to assess whether legislative acts of the Parliament, the President, the Cabinet or the Crimean Parliament are in line with the [Constitution of Ukraine](http://en.wikipedia.org/wiki/Constitution_of_Ukraine). This Court also gives commentaries to certain norms of the Constitution or laws of Ukraine (superior acts of the Parliament).

Authorities of the Constitutional Court of Ukraine include adopting decisions and providing conclusions in cases dealing with:

- constitutionality of laws and other legal acts of the Verkhovna Rada of Ukraine, the President of Ukraine, the Cabinet of Ministers of Ukraine, and the Verkhovna Rada of the Autonomous Republic of Crimea;

- conformity of the current international agreements of Ukraine or those international agreements introduced into the Verkhovna Rada of Ukraine to the Constitution of Ukraine;

- adherence to the constitutional procedure for investigation and consideration of cases on removing the President of Ukraine from the office following the impeachment procedure;

- official interpretation of the Constitution and laws of Ukraine.

Forms of application to the Constitution Court of Ukraine are constitutional submission and constitutional application.

Decisions and conclusions of the Constitutional Court of Ukraine are final and are not subject to appeal. They are mandatory for implementation throughout the entire territory of Ukraine. At the same time, the Law gives the right to a judge of the Constitution Court to present their specific opinion in writing, which is enclosed to the decision or conclusion.

**10. Local-self government**

“Local-self government” is the right of the territorial community – residents of villages or voluntary unification of residents of several villages, settlements and towns into rural community – to independently resolve local issues within the Constitution of Ukraine and laws of Ukraine.

Particular aspects of the exercise of local self-governing in the cities of Kyiv and Sevastopol shall be determined by the special laws of Ukraine.

Local self-governing shall be exercised by a territorial community in compliance with a procedure established by law, both directly and through local self-government bodies: village, settlement and city radas, and their executive bodies.

Rayon and oblast radas shall be the bodies of local self-government representing the common interests of territorial communities of villages, settlements, and cities.

The issues of organisation of the administration of city districts shall fall within the competence of city radas. Village, settlement, and city radas may permit, at the initiative of residents, the establishment of house, street, block, or other bodies of popular self-organisation, and assign them a part of their own competence, finances, or property.

 Village, settlement, city, rayon or oblast radas comprise deputies elected for a five-year term by residents of village, settlement, city, rayon or oblast on the basis of universal, equal, and direct suffrage by secret ballot.

Territorial communities shall elect respectively the head of the village, settlement, or city, who shall lead the executive body of the rada and preside at its meetings, for a five-year term, on the basis of universal, equal, and direct suffrage by secret ballot.

The status of heads, deputies, and executive bodies of a rada, their powers, and procedures of their establishment, reorganisation, and liquidation are determined by law.

The head of a rayon rada and the head of an oblast rada shall be elected by the respective rada and shall lead the executive staff of the council.

Personal and real estate, revenues of local budgets, other funds, land, natural resources owned by territorial communities of villages, settlements, cities, city districts, and objects of their common property managed by rayon and oblast radas shall be the material and financial basis for local self-government. Territorial communities of villages, settlements, and cities may combine objects of communal property as well as budget funds on the basis of agreements in order to implement joint projects or to jointly finance (maintain) communal enterprises, organisations, or establishments, and create appropriate bodies and services for this purpose.

The State participates in the collection of revenues for budgets of local self-governments and financially support local self-governments. Expenditures of local self-government bodies arising from the decisions of state power bodies must be reimbursed by the State.

 Territorial communities of a village, settlement, and city, directly or through the local self-government bodies established by them, manage the property in communal ownership; approve programmes of socio-economic and cultural development and control the implementation of such programmes; approve budgets of respective administrative and territorial units and control the execution of such budgets; establish local taxes and levies in accordance with law; ensure holding of local referendums and implementation of their results; establish, reorganise and liquidate communal enterprises, organisations and institutions and supervise their activity; and settle other issues of local importance assigned to their competence by law.

Oblast and rayon radas approve programmes for socio-economic and cultural development of respective oblasts and rayons and control the implementation of such programmes; approve rayon and oblast budgets formed from the funds of the State budget for their appropriate distribution among territorial communities or for the implementation of joint projects and from the funds drawn on the basis of agreement from local budgets for the realisation of joint socio-economic and cultural programmes, and control the execution of such budgets; settle other issues delegated to their competence by law. Certain powers of executive power bodies may be assigned by law to local self-government bodies. The State finances the exercise of such powers from the State Budget of Ukraine in full or through the allocation of certain national taxes to a local budget in compliance with a procedure established by law, and transfer the relevant objects of state property to local self-government bodies. Local self-government bodies are under the control of respective executive power bodies in connection with the exercise of powers of executive power bodies by such bodies.

Local self-government bodies, within the scope determined by law, shall adopt decisions mandatory for execution throughout the respective territory.

In case of nonconformity of decisions of local self-government bodies with the Constitution or laws of Ukraine, such decisions must be suspended in compliance with the procedure established by law with a simultaneous appeal to a court.

**Theme 4. Fundamentals of Administrative Law of Ukraine.**

Plan

1. A concept of Administrtive Law.
2. A concept and composition of an administrative offence.
3. Types of administrative penalties.
4. Types of administrative penalties for a minor.

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* 1. **A concept of Administrtive Law.**

Administrative law is the body of law that allows for the creation of public regulatory agencies and contains all of the statutes, judicial decisions, and regulations that govern them. It is created by administrative agencies to implement their powers and duties in the form of rules, regulations, orders, and decisions.

Administrative procedure constitutes the methods and processes before administrative agencies, as distinguished from judicial procedure, which applies to courts. The fundamental challenge of administrative law is in designing a system of checks that will minimize the risks of bureaucratic arbitrariness and overreaching, while preserving for the agencies the flexibility that they need in order to act effectively. Administrative law thus seeks to limit the powers and actions of agencies and to fix their place in our scheme of government and law. Administrative law is an area of law that you will need to rely on if you wish to challenge a decision or action of a government official, department or authority. Administrative law may also apply when the person whose decision you wish to challenge is not a government officer but is exercising "public power" (e.g. a power granted to a person by a statute). Decisions or actions governed by administrative law are called (in this chapter) "administrative decisions". Administrative law usually only enables decisions (or actions) that are "administrative" in nature to be challenged. This means that there are other types of "decisions" made in government but nor governed by administrative law.

The following are examples of decisions that may not be governed by administrative law:

- legislative "decisions" (e.g. the making of laws; however, delegated legislation may be reviewable on a similar basis to administrative decisions);

- broad policy decisions (e.g. deciding to reduce a grants program);

- employment decisions (e.g. decisions to hire an employee; however, administrative law may apply to public service misconduct decisions);

- criminal cases (e.g. decisions to prosecute; however, it does apply to investigations); and

- contract decisions (e.g. decisions by government to enter into a contract; however, tender processes may be subject to some administrative law principles).

Examples of administrative decisions that you may be able to challenge under administrative law principles and mechanisms include:

- a decision by a Council to compulsorily acquire land;

- a decision by ASIC to declare a person not fit and proper to hold a financial

services licence;

- a decision by a Minister not to grant a visa;

- a decision of Centrelink to cease paying a benefit; and

- a decision to impose conditions on a licence.

Administrative decisions are usually made by government officers, but may also be made by people who are not government officers. If the decision involves "statutory power" then it is likely to be regulated by administrative law.

* 1. **A concept and composition of an administrative offence.**

An administrative offence is the type of an offence hat has and its composition. The mentioned notion may be understood as an unlawful, guilty (deliberate or negligent) act or failure to act, which infringes on public order, property, citizens’ rights and liberties, or established procedure of management, and for which administrative liability is provided for in the law.

A composition of an administrative offence and every part of its. It is obligatory to tell about four elements of an administrative offence that are an object of an administrative offence; - an objective side of an administrative offence; - a subject of an administrative offence; - a subjective side of an administrative offence.

* 1. **Types of administrative penalties.**

According to the Code of Ukraine on Administrative Offences, there are following administrative penalties:

1) warning;

2) fine;

3) paid seizure of the item that was the instrument of committing an administrative offence or its direct object;

4) forfeiture: of the item that was the instrument of committing an administrative offence or its direct object; of the monies received due to committing an administrative offence;

5) deprival of a special right granted to the citizen concerned (the right of driving, the right of hunting);

 6) correctional labor;

7) administrative arrest.

**4. Types of administrative penalties for a minor.**

There are following types of administrative penalties for minor that are:

- warning;

- fine;

- correctional works;

- confiscation;

- paid withdrawal of object.

It is onligatory to fix that administrative arrest is not used for minors.

There are following measures of education influence for minors that can be used for them that are:

- obligation to ask an apology of victim in publicly or in other form;

 - warning;

- reprimand or severe reprimand;

- transmission a minor under a supervision of a minor’s parents or a person who replace them or under a supervision of a pedagogical or labour collective after their consent, and also separate citizens, on their request.

**Theme 5. Fundamentals of Civil Law of Ukraine.**

Plan

1. A notion and sources of Civil Law of Ukraine.

2. A notion and types of the civil legal relations.

3. Types of personal non-property rights.

4. Forms of property in Ukraine.

5. Types of obligations.

6. Succession.

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**1. A notion and sources of Civil Law of Ukraine.**

Сivil law is the field of national law of Ukraine, the system of legal norms, which regulate the personal non-property and property relations between a natural person and/or a legal entity.

The sources of civil law are:

1. the Constitution of Ukraine;
2. the Civil code of Ukraine;
3. the laws of Ukraine;
4. the documents of the President of Ukraine, the Cabinet of Ministers of Ukraine and the documents of other public officers.

The main document of civil law in Ukraine is the Civil code of Ukraine, which was accepted on the 16th of January in 2003 and which entered into fors on the 1st of January in 2004. It consists of 6 parts that are called books:

BOOK ONE – GENERAL PROVISIONS

BOOK TWO – PERSONAL NON-PROPERTY RIGHTS OF A NATURAL PERSON

BOOK THREE – OWNERSHIP RIGHT AND OTHER PROPRIETARY RIGHTS

BOOK FOUR – INTELLECTUAL PROPERTY RIGHT

BOOK FIVE – THE RIGHT OF OBLIGATION

BOOK SIX – LAW OF SUCCESSION

**2. A notion and types of the civil legal relations.**

Civil legislation regulates personal property and non-property relations.

Property relations are connected with acquisition, possession and a possibility to dispose of property.

The personal non-property relations arise up on the basis of realization of the personal non-property rights, for example, for human dignity, honour, life, health, right on freedom of literary, artistic, scientific and technical creation etc.

 **3. Types of personal non-property rights.**

Types of Personal Non-Property Rights

A natural person shall have the right to life, health protection, safe environment, freedom and personal security, inviolability of personal and family life, respect of dignity and honour, the right to the privacy of correspondence, telephone conversations, telegraphic and other correspondence, the right to inviolability of dwelling, the right to a free choice of residence and to free movement, the right to freedom of literary, artistic, scientific and technical creativity.

PERSONAL NON-PROPERTY RIGHTS PROVIDING NATURAL EXISTENCE OF AN INDIVIDUAL

The Right to Life

The Right to Eliminate, the Danger Threatening the Life and Health

The Right to Health Protection

The Right to Medical Aid

The Right to Information on the State of Health

The Right to Health Secrecy

The Rights of a Natural Person Undergoing Treatment in a Hospital

The Right to Freedom

The Right to Person Immunity

The Right to be a Donor

The Right to Family

The Right to Guardianship and Tutorship

The Right to Safe Environment

PERSONAL NON-PROPERTY RIGHTS PROVIDING SOCIAL LIFE OF A NATURAL PERSON

The Right to Name

The Right to Change the Name

The Right to Use the Name

The Right to Respect for Dignity and Honour Respect for a Dead Person

The Right to Inviolability of Business Reputation

The Right to Individuality

The Right to Personal Privacy and Its Secrecy

The Right to Information

The Right to Personal Papers

The Right to Familiarization with Personal Papers Transferred to the Library or Archive Stock

The Right to the Privacy of Correspondence

The Right to Freedom of Literary, Art, Scientific and Technical Creativity

The Right to Residence

The Right to Inviolability of Dwelling

The Right to a Free Choice of Occupation

The Right to Freedom of Movement

The Right to Freedom of Association

The Right to Peace Assemblies

**4. Forms of property in Ukraine.**

Ownership Right is the right of an individual in a thing (property) that he/she enjoys in compliance with the effective legislation on his/her own will irrespective of the will of the third persons.

The owner shall have the right to own, use and dispose of his property. The content of the ownership right shall not be affected by the owner’s place of residence and the location of the property.

Subjects of the ownership right shall be the Ukrainian people and other participants to civil relations specified in this Code. All subjects of the ownership right shall be equal before the law.

The owner may possess, use and dispose of his/her property at his/her own discretion. The owner may be entitled to perform any actions to his/her property if these actions do not contradict the legislation. In enjoying the rights and performing the obligations the owner shall be obliged to meet the moral principles of the society.

Ownership Right of Ukrainian People

Earth, its mineral resources, atmospheric air, water and other natural resources located within the boundaries of Ukraine, natural resources of its continental shelf, exclusive, (marine) economic zone shall be the objects of ownership right of Ukrainian people.

Bodies of the state power and local governments shall be delegated the ownership right on behalf of the state within the limits established by the Constitution of Ukraine.

Every citizen shall have the right to use the natural objects of the ownership right of

Ukrainian people pursuant to the law.

Right of Private Property

Natural and legal persons shall be the subjects of private property. Natural and legal persons may be the owners of any property except for specific types of property that cannot be in their possession pursuant to the law. Composition, quantity and value of property that can be owned by natural and legal persons shall have no limitations. The law may establish a limited size of the land parcel that can be owned by natural or legal persons.

Right of the State Property

The state shall own the property including monetary funds possessed by the Ukrainian State. Relevant bodies of the state power shall exercise the property right on behalf and to the interests of the Ukrainian State.

Right of the Municipal Property

The municipal property shall comprise property including monetary funds owned by the territorial community. The municipal property shall be managed directly by the territorial community and the local bodies created thereby.

**5. Types of obligations.**

There are two types pf obligations: contractual and noncontractual.

There are following types of contractual obligations.

Sales Contract

Under a sales contract a party (a seller) shall transfer or take an obligation to transfer property (goods) into possession of the other party (a buyer) and the buyer shall accept or take an obligation to accept the property (goods) and to pay a certain amount of money for it.

Any goods, which are available at the seller at the moment of the agreement concluding or will be created (purchased, acquired) by the seller in future may be subject matter of a sales contract. Property rights may be subject matter of a sales contract. General regulations on purchase and sale shall be applied to a sales contract of property rights unless otherwise results from the contents or nature of these rights.

 Retail Sales Contract

Under a retail sales contract the seller undertaking business activity of selling goods shall be obliged to transfer to the buyer the goods usually intended for personal, household or other use not connected with business activity and the buyer shall be obliged to accept and pay for the goods.

 Supply Agreement

Under a supply agreement the seller (supplier) that carries on business shall be obliged to transfer to the buyer’s possession within a prescribed period (term) the goods to be used in business or for the other purpose not connected to personal, family, household or other similar use and the buyer shall be obliged to accept the goods and to pay a certain sum of money for it.

Contracting Agreement of Agricultural Products

Under an agricultural products contracting agreement a producer of agricultural products shall be obliged to produce the agricultural products established by the agreement and transfer them into ownership of a provider (contractor) or a recipient established by him and a provider shall be obliged to accept these products and pay for them at the established prices pursuant to the agreement’s provisions.

Agreement for Energy and Other Resources Supply through the Connection Network

Under a supply agreement of energy and other resources through the connection network a party (provider) shall be obliged to supply to the other party (consumer, customer) energy and other resources stipulated by the agreement and a consumer (customer) shall be obliged to pay the value of the accepted resources and to observe the contractual mode of its use, and also to ensure safety use of power and other equipment.

Exchange Agreement

Under an exchange (barter) agreement each of the parties shall be obliged to transfer goods into the other party’s possession in exchange for the other goods. Each of the parties to an exchange agreement shall be a seller of the goods transferred in exchange and a buyer of the goods received in exchange.

 Gift Agreement

Under a gift agreement a party (grantor) shall transfer or be obliged to transfer cost-free in the future the property (gift) into the other party’s (grantee) possession.

An agreement that establishes an obligation of the grantee to perform any action of property

or non-property character shall not be a gift agreement. Movables including money and securities, and real estate may be a gift. Property rights owned by the grantor or property rights that may arise with him in the future may be a gift. Form of a Gift Agreement A gift agreement of personal and household use objects may be concluded orally. A gift agreement of real estate (feoffment) shall be concluded in writing and shall be notarized. A gift agreement of property right and a gift agreement with the obligation to transfer a gift in the future shall be concluded in writing. In case a written form of a gift agreement is not observed this agreement shall be invalid. A gift agreement of movables having specific value shall be concluded in writing. Transfer of such an object under oral agreement is legitimate, unless the court establishes that a grantee possessed it illegally. A gift agreement of currency valuables for a sum exceeding a fifty-fold amount of a tax-free minimum of the citizens’ income shall be concluded in writing and shall be subject to notarization.

 Rent Agreement

Under a rent agreement a party (rentier) shall transfer the property into ownership of the other party (rent payer, tenant) and in return for it a tenant shall be obliged to periodically pay a rent to a rentier in the form of a certain sum of money or in some other form.

A rent agreement may determine an obligation to pay rent perpetually (open-ended rent) or within a specific period. A rent agreement shall be concluded in writing. A rent agreement shall be subject to notarization and the agreement on the real estate transfer for the rent payment shall be also subject to state registration. Natural persons or legal entities may be the parties to a rent agreement.

A Lifelong Maintenance (Attendance) Agreement

By the agreement of the lifelong maintenance (attendance) a party (alienator) shall transfer a residential building, a flat, or part thereof, other real estate, or movables of significant value into ownership of the other party (recipient, alienee), in return thereof an alienee shall be obliged to provide a lifelong maintenance and (or) attendance to an alienator. A lifelong maintenance (attendance) agreement shall be concluded in writing and shall be subject to notarization. A lifelong maintenance (attendance) agreement stipulating transfer of real estate to an alienee’s ownership shall be subject to state registration.

Lease Agreement

Under a lease agreement, a lessor shall transfer or shall be obliged to transfer to a lessee the property for use for fee for a certain period of time.

Sublease

Transfer of a leased object by the lessee to another person for use (sublease) is only possible by the consent of the lessor, unless otherwise is provided by the agreement or the law.

Contract of Hire

According to a contract of hire, a lessor carrying out business on hiring out objects shall transfer or be obliged to transfer a movable object to a hirer for use for payment for a certain period of time. Subject matter of a contract of hire shall be a movable object used to satisfy the household non-production needs.

Land Lease Agreement

Land lease agreement shall be an agreement upon which a lessor undertakes an obligation to transfer a plot of land to the lessee for possession and use for a specified period of time and for payment.

Form of a Lease Agreement for a Building or Any Other Capital Structure

A lease agreement for a building or any other capital structure or a part thereof shall be concluded in writing. A lease agreement for a building or any other capital structure or a part thereof concluded for a period of three years and more shall be subject to notarization. A lease agreement for a building or any other capital structure or a part thereof concluded for a period not less than three years shall be subject to state registration. Subject matter of a transportation rent agreement shall be air, water and river carriers and land transport vehicles, etc.

 Leasing Agreement

 Under a leasing agreement one party (a lessor) shall transfer or shall be obliged to transfer to use to another party (a lessee) the property owned by the lessor under the ownership right and acquired without any preliminary agreement with the lessee (direct leasing); or the property specifically acquired by the lessor from the buyer (a supplier) in compliance with the specifications and conditions set out by the lessee (indirect leasing) for a definite period of time and for payment (lease payments).

Tenancy Agreement

Under a tenancy (lease) agreement one party – the housing owner (lessor) shall transfer or shall be obliged to transfer premises to the other party (lessee) to occupy it for a certain period of time and for payment.

Lending Agreement

According to a lending agreement one party (a lender) shall provide or shall be obliged to provide an object at no charge to another party (a user) to be used during a certain period of time.

Contractor’s Agreement

A contractor’s agreement shall mean an agreement in which one party to the agreement (a contractor) agrees at its risk to perform certain work upon the assignment of the other party (a client), whereas a client takes an obligation to accept and pay for the work performed.

A contractor’s agreement may be concluded for the production, processing, repair

Agreement of Research and Development, Design and Development and Technological Work

Under an agreement of research and development, design and development and technological work a contractor (an executor) shall be obliged to conduct researches, to develop a sample of a new product and to design relevant documentation or new technology, etc, as assigned by the client whereas the client shall be obliged to accept the work performed and to effect payment.

Service Agreement

Under an agreement to provide services (service agreement) one party (an executor) shall be obliged to provide service as assigned by the other party (a client). The service shall be consumed in the process of performing a certain action or conducting certain activity, whereas the client shall be obliged to pay the executor for the mentioned service, unless otherwise is established by the law. Transportation of freight, passengers, luggage or mail shall be executed under a transportation agreement. General conditions of transportation shall be established by this Code, other legislation, transport codes (statutes) or other regulatory documents and rules issued in compliance thereupon.

Storage Agreement

Under a storage agreement one party (depositee) shall undertake an obligation to store an object transferred to it by another party (depositor) and to return it safe to the depositor.

Insurance Agreement

Under insurance agreement one party to the agreement (an insurer) shall assume an obligation in special event (insurance accident) to pay the other party (an insurant) or another person specified in the agreement the amount (insurance payment), whereas an insurant shall assume an obligation to remit insurance payments and to comply with the other terms and conditions as prescribed by the agreement.

Agency Agreement

According to an agency agreement, one party (an agent, confidant) shall be obliged to undertake certain legal actions in the name and at the expense of the other party (a principal). A transaction completed by an agent shall create, amend or terminate civil rights and liabilities of a principal.

Commission Agreement

Under a commission agreement one party (a commissioner) shall assume an obligation as commissioned by another party (a committent) to perform one or several transactions in its name but at the expense of the committent.

Property Management Agreement

Under the property management agreement one party (management settler) shall transfer to another party (a manager) the property into management for a specific period of time and the other party shall be obliged to manage this property for fee on its behalf to the interests of the management settler or a person (beneficiary) determined by him.

Loan Agreement.

Under the loan agreement one party (a lender) shall transfer into possession of other party (a borrower) monetary funds or the other objects specified by the gender characteristics, while the borrower shall be obliged to return the lender the same amount of monetary funds (the sum of the loan) or the same quantity of the objects of the same origin and the same quality.

The loan agreement shall be deemed concluded since the moment of the money transfer or the other objects, specified by the origin characteristics. The loan agreement shall be concluded in writing, unless its sum is below a ten-fold amount of a tax-free minimum of the citizens’ income established by the law and in cases of the legal entity of a lender – irrespectively of the sum. To confirm the loan agreement conclusion and its provisions a borrower may present a receipt or another document witnessing to the transfer of a specific monetary sum or a certain quantity of objects to him by the lender.

Credit Agreement

Under a credit agreement the bank or another financial institution (lender, creditor) shall be obliged to lend to the borrower monetary funds (credit) in the amount and on the conditions stipulated by the agreement, and the borrower shall be obliged to repay the credit and to pay the interest.

Bank Deposit Agreement

Under a bank deposit agreement one party (a bank) that accepted a certain sum of money (a deposit) from or for the other party (a depositor) shall be obliged to pay a depositor the same amount of money and the interest on it the income in the other form under conditions and per the procedure determined by the agreement.

 Bank Account Agreement

Under a bank agreement the bank is obliged to accept and enter into account opened for a client (account owner) monetary funds receivable by him, to fulfill the client’s instructions on recalculation and issuance of the respective sums from the account, and to complete other account transactions.

Factoring Agreement

Under factoring agreement (financing under the cession of the monetary claim right) one of the parties (a factor) shall transfer or be obliged to transfer the funds into disposition of the other party (a client) for a fee, and a client shall cede or be obliged to cede a factor his right of the monetary claim to the third person (a debtor).

 Commercial Concession Agreement

Under commercial concession agreement one party (a titleholder) shall be obliged to grant the other party (a user) for a fee the right of use pursuant to its claims of a set of rights belonging to it aimed at manufacturing and/or sale of a specific type of goods, and/or providing services.

Joint Venture Agreement

Under a joint venture agreement the parties (participants) shall be obliged to act mutually without creating a legal entity to reach a certain goal that does not contradicts the law.

Joint venture may be performed on the basis of uniting the participants’ contributions (simple partnership) or without uniting the participants’ contributions.

There are following types of noncontractual obligations.

Public Promise of the Reward Without Competition Announcing.

A person may publicly promise a reward (remuneration) for transfer to it a respective result

(transfer of information, finding an object, finding a physical person etc.).

Performing Actions in the Property Interests of the Other Person Without Its Commission.

In case of unprofitable property consequences threaten the property interests of the other person, this person shall be entitled without commission to perform actions aimed at prevention, elimination or minimizing such consequences.

Saving of health and life of an individual, property of a natural or a legal person.

Threating life, health, property of a natural person or a legal entity.

Indemnification. Property damage resulted from illegal decisions, acts or inactivity towards personal non-property rights of a physical or legal entity as well as damage inflicted to the property of a physical or legal entity shall be indemnified in full by a person that inflicted it.

**6. Succession.**

Succession is the passing of rights and obligations (inheritance) from a natural person who died (the testator) to other persons (the heirs).

Types of Succession

Succession is exercised based on a will (testamentary succession) or according to law (legal succession).

Inheritance includes all rights and obligations of the testator as of the moment of opening of inheritance that did not terminate in consequence of the testator's death.

TESTAMENTARY SUCCESSION

A will is a personal arrangement made by a natural person in case of his/her death.

Natural persons in full civil capacity has the right to make a will. The right to make a will is exercised personally. Making a will through a representative is not permitted.

Irrespective of any family relations, the testator may institute one or several natural persons or other participants of civil relations as his/her heirs. Without specifying the reasons, the testator may divest any of the legal heirs of the right to succession. In this case, such a person shall not receive the right to succession.

The testator cannot divest the persons eligible to the hereditary portion of the right to succession. The validity of the will with regard to the persons eligible to hereditary portion shall be established at the moment of opening of inheritance.

In case of death of a person divested of the right to succession before the testator's death, the divestment of the right to succession losses effect. The children (grandchildren) of such a person shall have the right to succession on general grounds.

The testator may oblige the heir to take certain actions of non-pecuniary nature, particularly with regard to disposal of personal documents and defining the place and form of the burial.

The testator may oblige the heir to take certain actions aimed at achievement of socially beneficial goals.

Irrespective of the will, the testator's juvenile children, grown-up incapable children, incapable widow (widower) and incapable parents inherit half of the shares that would belong to each of them in case of legal succession (compulsory portion).

The court may decrease the amount of hereditary portion taking into account the relations between the given heirs and the testator or other essential circumstances.

The hereditary portion of the inheritance includes the value of the usual household and private items, the value of testamentary renunciation for the benefit of a person eligible to the hereditary portion, and the value of other items and property rights inherited by this person.

Any restrictions or encumbrances established in the will for the heir eligible to the hereditary portion are effective only with regard to the share of the inheritance that exceeds his/her hereditary portion.

Will with Condition

For the creation of the right to succession, the testator may envisage a certain condition for the person specified in the will either related or not related to this person's behavior (existence of other heirs, residence at a certain place, birth of a child, education, etc.)

The condition established in the will exist as of the moment of opening of the inheritance.

A condition established in the will be void if it contradicts law or moral principles of the society. A person instituted in the will as a heir shall not have the right to claim declaring the condition null and void for the reason that the said person was not aware thereof or that the condition did not depend upon the said person.

A married couple may make a joint will with regard to the property jointly owned thereby.

In case of a joint will, a share in joint ownership belonging to a deceased spouse shall pass to the survivor. In case of death of the latter, the persons instituted in the will as heirs have the right to succession. In the lifetime of both spouses, either of them shall have the right to refuse from the joint will. The refusal from the joint will shall be notarized. In case of death of one of the spouses, the notary establishes prohibition to alienate the property specified in the marital will.

General Requirements as to the Form of the Will

A will has to be executed in writing with indication of the place and time of its construction.

A will has to be personally signed by the testator.

If a person cannot sign the will personally, the will must be signed by his or her representative and it must be notarized. A will shall be certified by a notary or other officials specified in the Civil Code of Ukraine.

(If there is no notary in a populated place, a will other than the secret wills may be certified by an authorized official of the relevant local government.

A will made by a person staying in a hospital or other in-patient health care institution, or a person residing in an old people's home or an invalids' asylum, may be certified by a chief medical officer, or a deputy thereof, or a doctor on duty of the hospital, or other in-patient health care institution, or the director or chief medical officer of the old people's home or invalids' asylum.

A will made by a person on board a sea or river vessel under the flag of Ukraine may be certified by its captain.

A will made by a person participating in a search party or expedition may be certified by the head thereof.

A will made by a military servant, or in the places of location of military units, detachments, institutions, military training institutions in default of a notary or the bodies authorized to exercise notary acts, as well as the wills made by workers, employees, members of families thereof and families of military servants, may be certified by the commander (head) of the said unit, detachment or institution.

A will made by a person serving his/her sentence in prison may be certified by a prison governor.

A will made by a person under arrest may be certified by the head of the trial center.

A notary certifies the will constructed by the testator manually or using the common technical devices. By the testator's request, a notary may construct a will at the testator's dictation manually or using the common technical devices. In this case, the will be read aloud and signed by the testator. If a testator cannot read the will because of physical incapability, the will shall be certified in presence of witnesses.

Notarization of Secret Wills

A secret will is the will certified by the notary without reading its contents.

The person who constructed the secret will submits it in a closed envelope to the notary. The envelope shall bear the testator's signature. The notary shall make a notarial record, attach a seal on the envelope, put it in another envelope and seal in the testator's presence.

Testator's Right to Cancel or Modify the Will

The testator has the right to cancel the will at any time.

The testator has the right to make a new will at any time. A later will shall cancel the previous will fully or in the part where it contradicts the latter.

Each new will cancels the previous will without restoring the will made by the testator before the previous will.

If a new will made by the testator is declared null and void, the previous will not be restored except the cases established by Articles 225 and 231 of this Code.

The testator has the right to modify the will at any time.

Cancellation or modification of the will is made by the testator personally.

Cancellation or modification of the will is made in accordance with the procedure established by this Code for certification of wills.

Declaring a Will Null and Void

A will made by the person who did not have the right thereto, or a will made with violations as to its form or certification shall be void.

Upon the claim presented by an interested party, the court declares a will null and void if it establishes that the testator's will was not free or did not conform to his/her desire.

Declaring null and void of a separate arrangement in the will shall not entail declaring its other parts null and void.

In case of declaring the will null and void, the heir divested of the right to succession according to the given will have the right to succession on general grounds.

LEGAL SUCCESSION

Legal heirs have the right to succession in turn.

Every next turn of legal heirs shall receive the right to succession in default of the previous turn of heirs, their divestment of the right to succession, non-acceptance of inheritance or refusal to accept inheritance, except the cases established by Article 1259 of this Code.

Change in the Sequence of Legal Succession

The sequence of legal succession may be changed by a notarized agreement of the interested heirs concluded upon inheritance opening. This agreement shall not violate the rights of heirs that are not parties thereto or the heirs eligible to hereditary portions.

A natural person is a legal heir of one of the sequent turns may receive the right according to the court decision to succession together with the heirs of the turn eligible to succession, on condition that this person for a long time provided care, material support or other assistance to the testator, who was helpless as a result of age, illness or mutilation.

First Priority Legal Heirs

The first priority legal heirs are the testator's children, including those conceived in the lifetime and born after death of the testator, the survivor spouse, and the parents.

Second Priority Legal Heirs

The second priority legal heirs are the testator's brothers and sisters, grandfather and grandmother both paternal and maternal.

Third Priority Legal Heirs

The third priority legal heirs are the testator's aunt and uncle.

Fourth Priority Legal Heirs

The fourth priority legal heirs are the persons who lived as one family with the testator for at least five years before the inheritance opening.

Fifth Priority Legal Heirs

The fifth turn legal heirs are other testator's relatives up to the sixth degree of kindred.

The relatives of a closer degree shall have priority over the farther degree relatives.

The degree of kindred shall be determined by the number of births between the testator and the relative. The testator's birth shall not be included in this number.

The fifth priority legal heirs are the testator's dependents other than his/her family members.

A dependent is an underage or incapable person other than the testator's family members, who received material assistance from the testator for at least five years, which was the only or the main means of subsistence.

Succession Based on the Right of Representation

The testator's grandchildren and great grandchildren inherit the share of the inheritance to be legally inherited by their mother, father, grandmother or grandfather, had they lived at the moment of opening of the inheritance.

The testator's great grandmother and great grandfather inherit the share of the inheritance to be legally inherited by their children (the testator's grandmother and grandfather), had they lived at the moment of opening of the inheritance.

The testator's nephews and nieces inherit the share of the inheritance to be legally inherited by their mother and father (the testator's sister and brother), had they lived at the moment of opening of the inheritance.

The testator's cousins inherit the share of the inheritance to be legally inherited by their mother and father (the testator's aunt and uncle), had they lived at the moment of opening of the inheritance.

If succession based on the right of representation is exercised by several persons simultaneously, the share of their deceased relative shall be equally divided.

In case of direct descending succession, the right of representation shall apply without restrictions of the degree of kindred.

Shares of Legal Heirs in the Inheritance

The shares of legal heirs in the inheritance shall be equal.

By oral agreement with regard to movable property, the heirs may change the share of one of the heirs in the inheritance.

By written notarized agreement with regard to immovable property or transportation means, the heirs may change the share of one of the heirs in the inheritance.

**Theme 6. Fundamentals of Family Law of Ukraine.**

Plan

1. Types of family legal relations and sources of Family Law.
2. Conditions and order of marriage.
3. A concept and order of divorce.
4. Personal non-property rights and duties of parents and children.
5. Grounds for deprivation of parental rights.
6. Adoption. Guardianship and tutorship

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**1. Types of family legal relations and sources of Family Law.**

The basic sources of family law are the Constitution of Ukraine and the Family code of Ukraine. It entered into force on the 1st of January in 2004. The Family code of Ukraine regulates three groups of relations:

Family relations, which arise up between a husband and a wife, between parents and children and other relatives. These relations are divided into property and personal (non-property). 2. Relations, which are equated with family (for example, question of adoption, guardianship, tutorship and patronage). 3. Relations of the civil registration (for example, the registration of birth, death, conclusion and dissolution of marriage etc.).

**2. Conditions and order of marriage.**

Marriage has to be determined as a family union between a man and a woman, which is registered in a register office with the aim to create a family.

A man and a woman must hand an application about marriage to the register office. Then after 1 month they must come to the register office to register their marriage and get the Marriage certificate. The solemn registration is not obligatory. The religious ceremony of marriage does not have legal value, the civil form of marriage (without the registration) does not generate the right and the duties of the married couple too. The basic conditions of marriage is a mutual consent of people, who want to get marriage and attainment by them age of marriage. Age of marriage for a woman is 18 and for a man is 18 years old too. Age of marriage for a person may be decreased to 14 years old on the decision of a court, when she is pregnant or when she or he has grave illness. It is impossible to register marriage between people in Ukraine, if one of them is married.

**3. A concept and order of divorce.**

Marriage is stopped as a result of death ofa wife or a husbandor when a husband or a wife is declared as dead by a court,and also as a result of divorce.

Divorce is realized on the application of one of the married couple or them both on the basis of the decision of the register office or on the basis of the decree (decision of a court). If there is no moot case about property and there is an agreement about divorce and a child, who is not a minor (a place for the child or children to live), between a wife and a husband, the case about dissolution of marriage must be explained by the register office. The married couple must hand the application about dissolution of their marriage and after 1 month after this they must come back to the register office to give the Certificate about dissolution of marriage. In this case the Certificate about dissolution of marriage certifies dissolution of marriage.

If there is a moot case about property or children, or if even one of the children is under 18, or when there is no mutual agreement about divorce, a court must decide this case. The lawsuit about dissolution of marriage may be presented by a husband or a wife, but it may not be presented during pregnancy of a wife and during 1 year after birth of a child, except cases, when one of the married couple committed crime in relation to the second or a child. Marriage is stopped in the day when the register office passes a decision about divorce or in the day when a decision of a court about divorce enters into force.

**4. Personal non-property rights and duties of parents and children.**

A mother and a father assume equal rights and responsibilities in respect of the child irrespectively of whether they were married to each other or not. Children assume equal rights and responsibilities in respect of their parents irrespectively of whether their parents were married to each other or not. A child’s mother and a father married to each other must have the responsibility to take the child away from the maternity home or any other health institution.

Parents must register the child’s birth in the public civil status act registration authority without delay but not later than one month after the child has been born. Disregard of this responsibility constitutes the ground for them to be brought to responsibility prescribed by law.

Parents must give a name, a surname and a patronymic for their child. Students must explain rights and duties of parents and children. It must be said that parents must educate the child in the spirit of respect for the rights and freedoms of the others, love to his/her family and relatives, people and Motherland. Parents must have the duty to care of the child’s health, his/her physical, spiritual and moral development. Parents must ensure that the child obtains full general secondary education and must prepare him/her to making his/her own life.

Parents must pay respect for the child, giving the child to other persons for education does not release the parents from their responsibility to care about him/her. Any exploitation of the child by parents is prohibited, and physical punishment of the child by the parents, as well as other inhuman or degrading treatment or punishments are prohibited. Parents have the right to choose forms and methods of the child’s education unless they are contrary to law and morals of the society.

**5. Grounds for deprivation of parental rights.**

A court may deprive the mother, the father of parental rights if he/she: 1) has not taken the child away from the maternity home or any other health institution without valid reasons and within six months did not care about the child; 2) avoids discharging his/her responsibilities to educate the child; 3) treats the child in a brutal manner; 4) is a chronic alcoholic or drug addict; 5) has recourse to the child’s exploitation, involves him/her in begging and vagrancy; 6) has been convicted for committing an intentional crime against the child. Also students must know that a mother, a father may be deprived of the parental rights in relation of all of their children or some of them. Students must explain legal consequences of parental rights deprivation and admit that a person: 1) loses his/her personal non-property rights in respect of the child and is released from responsibilities to educate the child; 2) terminates being legal representative of the child; 3) loses the rights for benefits given by the State to families with children; 4) may not be an adopter, custodian or caretaker of the child; 5) may not acquire in the future property rights arising from parentage, which he/she could have been entitled to in case of his/her inability to work (right to maintenance from children, right to an old-age benefit and reparation of the damage in case of loss of the breadwinner, succession right); 6) loses other rights arising from the affiliation to the child.

**6. Adoption. Guardianship and tutorship.**

The Family Law of Ukraine regulates guardianship, tutorship and adoption. Guardianship is a legal form of defence of the personal and property interests of minors under 14 and citizens, who were declared as incompetent by a court as a result of mental affection or imbecility. They need to have the guardian.

Tutorship (trusteeship) is a legal form of defence of the personal and property interests of minors in age from 14 to 18, and also citizens, who were declared by a court as person with limited legal capability or such people, who on the state of health cannot protect their rights. They need to have a tutor.

Adoptionis a legal act as a result of which the same personal and property right and duties are set between stranger people as between the native parents and children. Adoption is possible after the decision of a court about adoption. This act has two sides; they are the adopter from one side and the adopted from another side

**Theme 7. Fundamentals of Labor Law.**

Plan

1. A concept and types of a labor contract.

2. Probation period.

3. Working time.

4. Rest time.

5. Annual leaves.

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**1. A concept and types of a labor contract.**

A labor contract as a special type of labor agreement. It must be understood as an agreement entered into between the employee and the owner of enterprise, institution or organization or authorized by him/her body or individual according to which the employee must undertake to perform work determined in this agreement subject to observance of internal regulations, and the owner of enterprise, institution or organization or authorized by him/her body or individual must undertake to pay the employee salary and provide working conditions required for performance of work as prescribed by labor legislation, collective contract and agreement of the parties.

An employee must be entitled to realize his/her abilities as to efficient and creative work by entering into labor contract at one or simultaneously at several enterprises, institutions or organizations, unless otherwise prescribed by legislation, collective contract or agreement of the parties.

Special form of a labor contract is an agreement in which its validity period, rights, liabilities and responsibilities of the parties (including material ones), conditions of material security and organization of employee’s work, conditions of termination of the contract, including before the appointed time, may be determined as agreed upon by the parties.

The types of labor contracts: - termless, that is entered into for indefinite period of time; - entered into for definite period of time as agreed upon by the parties; - entered into for the period of performance of certain work.

**2. Probation period.**

When entering into labor contract the parties may agree upon probation with the purpose of verification of relevance of the employee to job entrusted thereto. Within the probation period employees must be governed by labor legislation. It is very important to know that probation must not be established in case of employment of persons under eighteen years old; young employees upon graduation from vocational schools; young specialists upon graduation from higher educational institutions; persons retired from military or alternative (non-military) service; disabled directed to work according to recommendations of medical and social expert examination.

Probation must not be established also in case of employment in other locality and in case of transfer to work at other enterprise, in institution or organization, as well as in other cases as prescribed by legislation.

Unless otherwise established by legislation of Ukraine, the probation period at employment may not exceed three months, and in certain cases as agreed upon with respective elective body of primary trade union organization – six months.

 Probation period at employment of workers must not exceed one month. If the employee was absent from work within the probation period in connection with temporary disablement or for other good reasons, the probation period may be extended for respective number of days within which he/she was absent.

If probation period is over, and the employee continues to work, he/she is considered to be such one who passed probation, and subsequent termination of labor contract must be allowed only on common basis.

**3. Working time.**

Normal working hours of employees may not exceed 40 hours per week.

When entering into collective contract enterprises and organizations may establish less number of working hours than as prescribed in part one of this Article.

Reduced working hours shall be established:

1) for employees aged from 16 to 18 years old - 36 hours per week, for persons aged from 15 to 16 years old (pupils aged from 14 to 15 years old working within the period of vacations) - 24 hours per week.

Working hours for pupils working during academic year in their free time may not exceed the half of maximum working hours prescribed in paragraph one of this clause for persons of the respective age;

2) for employees performing works in harmful working conditions – not more than 36 hours per week.

The list of plants, workshops, professions and offices with harmful working conditions engagement in which gives the right to reduced working hours shall be approved in accordance with the procedure established by legislation.

In addition, legislation shall prescribe for reduced working hours for certain categories of employees (teachers, doctors, etc).

Reduced working hours may be established at the expense of own funds of enterprises and organizations for women having children under fourteen years old or disabled child.

For employees five-day working week with two days-off shall be established. In five-day working week daily working hours (shifts) shall be determined by internal regulations or shift schedules to be approved by the owner or authorized by him/her body as agreed upon with the elective body of primary trade union organization (trade union representative) of enterprise, institution or organization subject to the established duration of working week. At the same enterprises, institutions or organizations where according to character of production and working conditions introduction of five-day working week is not expedient the six-day working week with one day-ff shall be established. In six-day working week daily working hours may not exceed 7 hours at week rate 40 hours, 6 hours at week rate 36 hours, and 4 hours at week rate 24 hours.

Five- or six-day working week shall be established by the owner or authorized by him/her body jointly with the elective body of primary trade union organization (trade union representative) with due regard for specific character of work, opinion of labour collective, and as agreed upon with local People’s Deputy Council.

The day before official holidays or non-working days (Article 73) working hours of employees, except for employees mentioned in Article 51 of this Code, shall be reduced by one hour both at five-, and six-day working week.

The day before days-off working hours at six-day working week may not exceed 5 hours.

When working at night the established working hours (shift) shall be reduced by one hour. This rule shall not apply to employees for whom reduction of working hours has already been prescribed (clause 2 of part one and part three of Article 51).

Working hours at night shall be put in a par with those during the day if this is required subject to conditions of production, in particular in continuous productions, as well as when working in shifts at six-day working week with one day-off.

Night working hours shall be from 10:00 p.m. until 06:00 a.m.

Engagement in night work shall be prohibited for:

1) pregnant women and women having children under three years old (Article 176);

2) persons under eighteen years old (Article 192);

3) other categories of employees prescribed by legislation.

Women shall not be allowed to work at night, except for the cases prescribed by Article 175 of this Code. Disabled shall be allowed to work at night only subject to their consent and provided that this is in compliance with medical recommendations.

According to the agreement entered into between the employee and the owner or authorized by him/her body, both at employment, and later on the part-time working day or part-time working week may be established. At the request of pregnant woman, woman having a child under fourteen years old or disabled child, including child she cares of, or woman caring of ill family member according to medical opinion, the owner or authorized by him/her body shall be obliged to establish for her part-time working day or part-time working week.

Remuneration of labour in these cases shall be effected pro rata hours worked or depending on output.

Part-time work shall put no limitations of labour rights of employees.

Start and end of daily working hours (shift) shall be prescribed by internal regulations and shift schedules in accordance with legislation.

In case of shift work employees shall take shifts evenly in accordance with the procedure established by internal regulations.

Taking shifts shall be usually effected every working day in hours specified in shift schedules.

**4. Rest time.**

“Rest time” is a period of day for rest. It is obligatory to explain break for rest and meal, days-off, uninterrupted weekly rest period, types of official holidays and non-working days. A student must admit that employees must be provided with break for rest and meal lasting not more than two hours. The break must not be included into working hours.

At five-day working week employees must be provided with two days-off per week, and at six-day working week – with one day-off.

Uninterrupted weekly rest period must be at least forty two hours. There are official holidays and non-working days.

At enterprises, in institutions or organizations where the work may not be interrupted on common day-off in connection with the necessity to service population (shops, public service establishments, theatres, museums, etc), work on day-off may be compensated for as agreed by the parties by providing another rest day or in monetary form in double amount.

To establish the following official holidays:

1 January – New Year’s Day

7 January – Christmas

8 March – International Women's Day

1 and 2 May – Day of International Solidarity of Workers

9 May – Day of defence against fashists (Victory Day)

28 June – Day of the Constitution of Ukraine

24 August – Ukraine’s Independence Day.

14 October – Day of Defendent

The work shall not be performed on religious holidays as well:

7 January – Christmas

one day (Sunday) – Easter

one day (Sunday) - Trinity.

At the request of religious communities of other (non-orthodox) confessions registered in Ukraine, management of enterprises, institutions or organizations shall provide persons practicing respective religions with up to three days of rest within the year for celebration of their great holidays with working for these days.

On days mentioned in parts one and two of this Article one may perform works which may not be stopped because of manufacturing conditions (constantly operating enterprises, institutions or organizations), works caused by the necessity to service population.

**5. Annual leaves.**

Citizens having labour relations with enterprises, institutions or organizations irrespective of ownership form, kind of activity and industry, as well as those working under labour contract with individual must be provided with annual (basic and additional) leaves with preservation of workplace (office) and salary for their periods.

Annual basic leave must be given to employees for the period of at least 24 calendar days per working year worked to be calculated as from the date of entering into labour contract. Persons aged under eighteen years old shall be given annual basic leave for the period of 31 calendar day. For particular categories of employees legislation of Ukraine may provide for other annual basic leave period.

Additional leaves must be given to employees: 1) for work with harmful and severe working conditions; 2) for specific character of work; 3) in other cases prescribed by legislation.

**Theme 8.** **Fundamentals of Criminal Law of Ukraine.**

Plan

1. A concept of criminal law of Ukraine. The Criminal code of Ukraine.

2. A notion, types and attributes of a crime.

3. Composition of a crime.

4. The stages of commission of a crime.

5. Criminal complicity.

6. The circumstances, which exlude criminality of an act and criminal responsibility.

7. Attributes and grounds of criminal responsibility.

8. A notion, aims and types of the criminal penalties.

9. The circumstances, which mitigate criminal punishment.

10. The circumstances, which aggravate criminal punishment.

11. Criminal liability of minors.

12. Amnesty and legislative pardon.

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**1. A concept of criminal law of Ukraine. The Criminal code of Ukraine.**

The main source of criminal law of Ukraine is the Criminal code of Ukraine, which was accepted on the 5th of April in 2001.

The code consists of General and Special part. General part, which consists of 16 chapters, contains the norms, that determine the principles of the criminal law, its task, the notion of the crime, the concept and the grounds of criminal responsibility.

The Special part of the Criminal code of Ukraine consists of 20 chapters. There are crimes against:

- the fundamentals of the national security of Ukraine;

- life and health of an individual;

- freedom, honor and dignity of an individual;

- sex freedom and sex immunity of an individual;

- voter, labor and other personal human and civil rights and freedoms;

- property rights;

- in the field of business activity;

- environment;

- public safety;

- production safety;

- traffic safety and safe transport operation;

- public order and morals;

- in the field of circulation of narcotic substances, psychotropic agents, their analogs or precursors and other crimes against public health;

- in the field of protection of state secret, immunity of state borders, draft and mobilization to the army;

- authority of government bodies, local self-government bodies and associations of citizens;

- in the field of using computers, computer systems and networks, and telecommunications networks;

- in the field of service duties;

- justice;

- established order for doing a military service (military crimes);

- peace, safety of the humankind and the international legal order.

**2. A notion, types and attributes of a crime.**

The most basic definition of a crime is “an act committed in violation of a law prohibiting it, or omitted in violation of a law ordering it. It is important to understand that criminal act, omission to act, and criminal intent are elements or parts of every crime. Illegality is also an element of every crime. Generally, the government must enact a criminal law specifying a crime and its elements before it can punish an individual for criminal behavior. Laws in a democratic society, unlike laws of nature, are created by people and are founded in religious, cultural, and historical value systems. People from varying backgrounds live in different regions of this country. Thus you will see that different people enact distinct laws that best suit their needs. However, the bulk of any criminal law overview is an examination of different crimes and their elements.

Attributes of а crime are:

* public dangerous act;
* guilty act;
* illegitimate act;
* punishability.

According to the Criminal code of Ukrain crimes are divided into׃ not grave crimes, middle grave crimes, grave crimes and very grave crimes (especially grave crimes).

**3. Composition of a crime.**

Composition of a crimeis a system of objective and subjective attributes, which are foreseen by the Criminal code of Ukraine and characterize the publicly dangerous act as the crime. There are such elements of the composition of the crime:

* an object;
* an objective side;
* a subject;
* a subjective side.

Guilt must be understood as a mental stance of a person in regard to the performed act or omission under the Criminal Code of Ukraine and to the consequences thereof, as expressed in the form of intent or recklessness. Intention may be direct or indirect its types. It must be explain that the intent is direct where a person was conscious of the socially injurious nature of his/her act (action or omission), anticipated its socially injurious consequences, and wished them. But the intent is indirect where a person was conscious of the socially injurious nature of his/her act (action or omission), foresaw it's socially injurious consequences, and anticipated, though did not wish them. Recklessness is subdivided into criminal presumption and criminal negligence. Recklessness is held to be criminal presumption where a person anticipated that his/her act (action or omission) may have socially injurious consequences but carelessly expected to avoid them. But recklessness is held to be criminal negligence where a person did not anticipate that his/her act (action or omission) may have socially injurious consequences, although ought to and could anticipate them.

**4. The stages of commission of a crime.**

The stages of commission of a crime are the stages of preparation and realization of crime. There are 3:

1. preparation to a crime;
2. attempt on a crime;
3. complete crime.

 **5. Criminal complicity.**

Criminal complicity is the intentional common participating of a few subjects of a crime in the commission of the intentional crime.

There are such forms of criminal complicity: simple and complicated.

Simple form of criminal complicity is when there is no agreement before the commission of the crime, when all joint offenders carry out identical roles.

Complicated form of criminal complicity is characterized by the previous agreement of joint offenders, when they create the criminal group or organization with distribution of the roles and the duties.

**6. The circumstances, which exlude criminality of an act and criminal responsibility.**

Circumstances that exclude criminality of an act: necessary defence, misread defence, apprehending of the offender, extreme necessity, physical or mental coercion, obeying an order or command, an act involving risk. The first must be understood as actions taken to defend the legally protected rights and interests of the defending person or another person, and also public interests and interests of the state, against a socially dangerous trespass, by inflicting such harm upon the trespasser as is necessary and sufficient in a given situation to immediately avert or stop the trespass, provided the limits of the necessary defence are not exceeded. To explain the second definition it is obligatory to admit that infliction of harm to legally protected interests in circumstances of extreme necessity, that is to prevent an imminent danger to a person or legally protected rights of that person or other persons, and also public interests or interests of the state, shall not be a criminal offence, where the danger could not be prevented by other means and where the limits of extreme necessity were not exceeded.

**7. Attributes and grounds of criminal responsibility.**

The attributes of criminal liability:

1. Criminal responsibility is the type of legal responsibility, which is used on behalf of the state.
2. Criminal responsibility is determined only by a court and only to the guilty person in the commission of the crime.
3. Criminal responsibility has the personal (for example, imprisonment for a definite period), property (for example, confiscation of property) and organizational (for example, deprivation of the right to take certain positions) character.
4. The subjects of criminal responsibility can be only a natural person, who attained 16, and 14, when it is foreseen by the Criminal code of Ukraine.
5. Criminal responsibility has the personal character, it is used only to the criminal and not transferred on other people.
6. Criminal responsibility is based on presumption of innocence. It means, that the person is unguilty to the moment, while the guilt of this person will not be proved (established) in a court and it is set by the verdict (sentence) of the court.

**8. A notion, aims and types of the criminal penalties.**

All criminal punishment are divided into basic, optional and mixed.

The following types of punishment can be applied to individuals who were found guilty of committing a crime by a court:

1) penalty (fine);

2) reduction in the military or special rank, title or a qualification class;

3) depriving of the right to take certain positions or to perform certain activities;

4) public works;

5) correctional works;

6) service restriction for military personnel;

7) confiscation of property;

8) arrest;

9) personal restraint;

10) retention in a disciplinary battalion for military personnel;

11) imprisonment for a definite period;

12) life imprisonment.

 There is no death penalty in Ukraine.

**9. The circumstances, which mitigate criminal punishment.**

For the purposes of imposing a punishment, there are following mitigating circumstances:

(1) surrender, sincere repentance or actively assistance in detecting the offense;

(2) voluntary compensation of losses or repairing of damages;

(3) the commission of an offense by a minor;

(4) the commission of an offense by a pregnant woman;

(5) the commission of an offense in consequence of a train of adverse personal, family or other circumstances;

(6) the commission of an offense under influence of threats, coercion or financial, official or other dependence;

(7) the commission of an offense under influence of strong excitement raised by improper or immoral actions of the victim;

(8) the commission of an offense in excess of necessary defense;

(9) undertaking a special mission to prevent or uncover criminal activities of an organized group or criminal organization, where this has involved committing an offense in any such case as provided for by this Code.

**10. The circumstances, which aggravate criminal punishment.**

For the purposes of imposing a punishment, the following circumstances aggravate punishment:

(1) repetition of an offense or recidivism;

(2) the commission of an offense by a group of persons upon prior conspiracy (paragraph 2 or 3 of Article 28);

(3) the commission of an offense based on racial, national or religious enmity and hostility;

(4) the commission of an offense in connection with the discharge of official or public duty by the victim;

(5) grave consequences caused by the offense;

(6) the commission of an offense against a minor, an elderly or helpless person;

(7) the commission of an offense against a woman who, to the knowledge of the culprit, was pregnant;

(8) the commission of an offense against a person who was in a financial, official or other dependence on the culprit;

(9) the commission of an offense through the use of a minor, a person of unsound mind or mentally defective person;

(10) the commission of an especially violent offense;

(11) the commission of an offense by taking advantage of a martial law or a state of emergency or other extraordinary events;

(12) the commission of an offense by a generally dangerous method;

(13) the commission of an offense by a person in a state of intoxication resulting from the use of alcohol, narcotic, or any other intoxicating substances

**11. Criminal responsibility of minors.**

The following types of punishment may be imposed on minors, who committed any criminal offense:

(1) fine;

(2) community service

(3) correctional labor;

(4) arrest;

(5) imprisonment for a determinate term.

Minors may be subject to such additional punishments as a fine and deprivation of the right to occupy certain positions or engage in certain activities.

**12. Amnesty and legislative pardon.**

Amnesty is announced in a Law of Ukraine in regard of a certain category of persons. The Law on amnesty may fully or partially discharge offenders from criminal liability or punishment. The Law on amnesty may commute a sentence or the remaining part of a sentence.

Pardon is granted by the President of Ukraine in regard of a particular individual. An act of pardon may substitute a life sentence imposed by a court by imprisonment for a term not less than twenty five years.

**Theme 9. Fundamentals of Law-enforcement and Law-protective activities**

Plan

1. The public prosecution of Ukraine.

2. Security Service of Ukraine.

3. Notariate.

4. The Bar and Legal Practice.

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**1. The public prosecution of Ukraine.**

**T**he public prosecution of Ukraine constitutes a single system entrusted with: 1) prosecution in court on behalf of the State; 2) representation of the interests of a citizen or of the State in court in cases determined by law; 3) supervision over the observance of laws by bodies that conduct operative-investigative activities, inquiry, and pre-trial investigations; 4) supervision over the observance of laws in the course of execution of court decisions in criminal cases and application of other measures of coercion in relation to the restraint of personal freedoms of citizens; 5) supervision over the observance of human and civil rights and freedoms and over the observance of laws regulating these issues by executive power bodies, by local self-government bodies, their officials, and officers.

**T**he public prosecution of Ukraine is headed by the Prosecutor General of Ukraine, The Verkhovna Rada of Ukraine may express the non-confidence in the Prosecutor General of Ukraine, which shall entail his resignation from the office. Students must admit that the term of powers of the General Prosecutor of Ukraine is five years.

**2. Security Service of Ukraine.**

“Security Service of Ukraine” as a state law-enforcement special purpose body which ensures state security of Ukraine, subordinates to the President of Ukraine and is under control of the Verkhovna Rada of Ukraine. Also students must tell about the structure and tasks of this service.

The main tasks Ukrainian Security Service that are: - carry out intelligence activity in compliance with the law; - uncover, stop and disclosure the crimes which investigation is referred by the legislation to Ukrainian Security Service competence; perform inquiry and investigation on these cases; search the persons who hide due to accomplishment of the above crimes; - ensure protection of Ukrainian state sovereignty, constitutional system and territorial integrity  from illegal encroachment of separate persons and their unions; - prevent crimes in the sphere of state security in accordance with the legislation;- participate in elaboration and carrying out measures concerning physical defense of nuclear plants, materials, waste, other sources of ionizing radiation as well as in conducting control over admission to basic works etc.

In order to fulfill imposed on them duties Security Service of Ukraine, its service and staff shall have right to: - enter the territory and official premises of enterprises and organizations in the procedure agreed with their administration, headquarters of military units; - conduct open and secret measures in the procedure set by the Law of Ukraine “On Operational Investigation Activity”; - co-operate with Ukrainian citizens and other persons also on contractual basis adhering therein to voluntary and confidential conditions of these relations; - for the sake of intelligence service, counterespionage and operational investigation activity create informational systems and keep operational record in amount and procedure determined by the tasks imposed on the Ukrainian Security Service by this Law; - according to the current legislation give arms to the persons under protection in case of danger to their life and health as well as special means of individual protection and inform them about danger, etc.

**3. The Bar and Legal Practice.**

According to the Law of Ukraine “On the Bar and Legal Practice” legal practice is independent professional activity of an attorney to defend, represent and provide other types of legal assistance to the client.

There are following conditions for a person to become an attorney that are: a natural person can be an attorney if he or she has complete higher legal education, can speak the official language, has a minimum of two years experience in the legal field, passed the qualification test, completed probationary training, took the oath of the Ukrainian attorney, and received a certificate authorizing them for legal practice.

People can not be an attorney if they: - have outstanding or expunged convictions for grave or especially grave crimes, or crimes of medium gravity punished by deprivation of freedom; - are deemed by court to be legally incapable or to have limited legal capacity; - were deprived of the right of legal practice – during two years after the resolution to deprive them of the right of legal practice; - were dismissed from the post of a judge, prosecutor, investigator, notary, from civil service or from service in the bodies of local self-government because of oath-breaking or corruption-related crimes – during three years after such dismissal.

Types of legal practice that are:

- providing legal information, consultations and clarification on legal issues, legal support of the work of natural persons and legal entities, bodies of state power, bodies of local self-government, and the state; - drawing up applications, complaints, procedural and other documents of legal nature; - protecting the rights, freedoms and legitimate interests of suspects, accused, defendants, convicts, acquitted persons, persons subject to or, in the course of criminal proceedings, considered for compulsory medical treatment or measures of educational influence, persons considered for extradition, or persons brought to administrative liability in the course of proceedings in an administrative case; - providing legal aid to witnesses in criminal proceedings; - representing the interests of the complainant in the course of administrative proceedings, and the rights and obligations of the injured person, civil plaintiff and civil defendant in the course of criminal proceedings; - representing the interests of natural persons and legal entities in the course of civil, economic, administrative and constitutional judicial proceedings, as well as in other state bodies, and to other natural persons and legal entities; - representing the interests of natural persons and legal entities, the state, bodies of state power and bodies of local self-government in foreign and international judicial bodies, unless otherwise established by the legislation of foreign states, constituent documents of international judicial bodies and other international organizations, or international agreements ratified by the Verkhovna Rada of Ukraine; - providing legal assistance during the execution and serving of criminal punishments.

**4. Notariate.**

Aaccording to the Law “On Notariate” notariate are a system of bodies and officials obliged to: - certify rights; - certify facts that have legal force; - perform other notary actions provided for by this Law with the purpose of giving them legal force. In Ukraine notary operations must be accomplished by state notaries, private notaries or officials of executive bodies of local (village, settlement, city) councils, if there are no notaries therein.

Notary operations abroad are performed by Ukrainian consular establishments and diplomatic representative offices. In some cases certification of wills and letters of attorney may be performed by: - doctors on duty of hospitals, sanatoriums; - captains of sea vessels sailing under Ukrainian flag; - chiefs of reconnaissance, arctic expeditions; - commanders of military units and military educational institutions; - chiefs of imprisoning.

There are following conditions for a person to become a notary. A person must: - be a citizen of Ukraine; - have higher legal education (university, academy, institute); - work on probation during 6 months in a state notary office or at private notary's; - pass qualification exam and get certificate permitting notary activities performance. Also it must be admitted that a person who has unspent convictions may not be a notary.