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Study guide

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Study guide for students-translators is based on original materials that introduces them to the terminology of the legal system of Ukraine, the UK and US.

The purpose of the study guide is to develop students' skills in understanding civil jurisprudence and high-quality legal texts translation.

The aim is to help students of translation departments master essential linguistic basis to ensure their competitiveness in the labor market.

Meant for students of translation departments of universities and institutes, can also be successfully used in higher and special educational establishments that train specialists in jurisprudence.

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PREFACE

The proposed textbook/tutorial is intended for students of higher education specialties 035 «Philology» and aims to develop language, speech, linguistic and socio-cultural competencies which are compulsory for effective professionally oriented oral and written communication, and the formation of terminology within the general legal topics: *Legal Systems, Judicial Systems, Civil Justice.*

The purpose of the publication is to teach students through exercises and tasks and allow them to master the skills of reading and translating original English texts, as well as to learn specific/certain vocabulary related to various branches of law.

The textbook/tutorial is divided into the corresponding eleven thematic blocks, consisting of sections/modules (Units). In turn, each section includes mandatory structural components: *Reading, Speaking and Writing.*

The didactic/educational/academic structure of the textbook is characterized by a consistent system of mixed tasks complexity, is focused on skills and abilities development of four types of speech activity – *reading, listening, speaking and writing*, which provides diversity and individualization of learning.

The material of the textbook is aimed at the formation of professionally-oriented vocabulary and the basics of communicative competence, it is also introduced thematically, strengthened by various/mixed exercises and is used in communicatively oriented tasks.

The «Translation of legal texts of civil law» course is a component/unit/module to equip students and is based on (centered on) the facts of theoretical subjects «Practice of translation from English», «Introduction to translation studies», «The theory of translation» and «Introduction to Linguistics».

LEGAL SYSTEMS

UNIT 1

Vocabulary

legal systems	codified legislation
based on	impose
religious law	court cases
mixtures	led to
derives from	body of laws.
communities	banned
tribes.	underlying principle
distinguishing features	political representatives
notion	legal source
wholly or partly	range from
exclusively	regulate
limit	precedent
statute	bundle

1. Discuss the following questions:

1. What is legal system?
2. What do you know about different legal systems?
3. Who makes laws in Ukraine?
4. Who makes laws in England?

2. Read and translate the text about different legal systems.

LEGAL SYSTEMS OF THE WORLD

There are different types of legal systems. They operate in countries around the world. Most Commonwealth countries and the United States use the system which is based on common law. Other main legal systems include civil law (civil code system)

and religious law. Some countries have legal systems which are mixtures of common law and other forms of law. The system of common law developed from a set of traditional laws. People first brought them together in England around the 12th century. The name derives from the fact that it was one set of laws «common» to the whole kingdom, rather than different sets of laws that people used in individual communities or tribes.

One of the distinguishing features of common law is that it developed through usage. Codified legislation does not impose law as with the civil code system. Common law is based on the outcomes of individual court cases (precedents). Each court case provided a basis for judging the next case of a similar nature. Over the centuries and many thousands of court cases, this process led to the creation of a body of laws. It covers most aspects of society.

The civil code or civil law system (also called Roman law, Continental law or Napoleonic law) is the commonest type in the world. The parliament or some other form of government legislates and codifies laws, which means that they bundle together laws of a similar nature to create a rational system across the whole area. They distinguish from common law mainly because they come from parliaments, not from court cases. Indeed, in civil code systems the courts do not usually have as much freedom to interpret laws. In the original Napoleonic courts laws banned judges from interpreting statute laws. The underlying principle of civil code systems is that citizens make laws through their political representatives and judges apply these laws to citizens. Judges are there to administer laws, not to make them.

Religious law refers to the notion of using a religious system or document as a legal source. Countries with legal systems based wholly or partly on religious law range from The Maldives where the legal system is almost exclusively Islamic to Singapore and India where religious law plays only a small

part in the overall legal system. There are many different legal systems in the world and they regulate society in different ways. However, the reason the laws are there at all is the same – to limit people's rights in certain ways in order to protect other people's rights; and to punish those who ignore the laws.

3. Fill in the blanks in the sentences from the text:

1. Countries with legal systems based wholly or partly _____religious law range _____The Maldives where the legal system is almost exclusively Islamic ____Singapore and India where religious law plays only a small part _____ the overall legal system.

2. Most Commonwealth countries and the United States use the system which is based _____common law.

3. The name derives _____the fact that it was one set _____laws «common» _____the whole kingdom, rather than different sets _____laws that people used in individual communities or tribes.

4. Common law is based _____the outcomes _____individual court cases (precedents). Each court case provided a basis _____ judging the next case _____a similar nature.

5. The system of common law developed _____a set _____traditional laws. People first brought them _____in England around the 12th century.

6. The underlying principle ____civil code systems is that citizens make laws _____their political representatives and judges apply these laws ____citizens.

7. They distinguish _____common law mainly because they come _____ parliaments, not from court cases.

8. In the original Napoleonic courts laws banned judges _____ interpreting statute laws.

9. Over the centuries and many thousands of court cases, this process led _____ the creation of a body _____ laws.

10. The parliament or some other form _____government legislates and codifies laws, which means that they bundle _____laws of a similar nature to create a rational system across the whole area.

4. Give the translation of the word combinations and memorize them

- to control;
- to use;
- to function;
- to prohibit;
- to differentiate;
- to ground;
- to come (from);
- to defend;
- to make (laws);
- to force (on smb.);
- idea;
- combination;
- delegate;
- result;
- characteristic;
- laws;
- group (of people);
- code;
- collection (of things);
- law.

5. Match each term with the definition.

1) rule or body of rules that people in a particular country or area must obey;	a) authority
2) the moral or legal right or ability to control;	b) law enforcement
3) an accepted principle or instruction that states the way things are or should be done, and tells you what you are allowed or are not allowed to do;	c) legislature d) court
4) an official body that has authority to try criminals, resolve disputes, or make other legal decisions;	e) law enforcement agency
5) (in Britain) a special court that deals with a specific matter (land, employment, etc.);	f) rule
6) an organization responsible for enforcing the law, e.g. the police;	g) to govern
7) to control and direct the public business of a country, city, group of people, etc.;	h) lawyer
8) the part of a country's government that is responsible	i) the judiciary

for its judicial system, including all the judges in the country's courts;	
9) a system of rules recognized by a community that are enforceable by established process;	j) judge k) legal system
10) someone whose job is to give advice to people about the law and speak for them in court;	l) tribunal
11) an official in a court of law who is in charge of a trial in a court and decides how a person who is guilty of a crime should be punished, or who makes decisions on legal matters;	m) law
12) an act or acts passed by a law-making body	n) legislation

❖ *TASKS FOR INDEPENDENT WORK*

1. Translate the text into Ukrainian

The legal system used in the United States (the «common law» system) is one of many legal systems used throughout the world. Differences in these various legal systems can greatly impact the key provisions of an international business contract such as the governing law (or «choice of law») provision and can significantly affect the property rights of a party to an international business contract. At Cantwell & Goldman PA, our international business help businesses and individuals

navigate these different legal systems, serve as U.S. counsel to overseas companies, and collaborate with local counsel in foreign countries (which is critical where the transaction involves the purchase, sale, lease, or development of foreign real estate).

The following is a list of the five major legal systems used throughout the world:

1. **Civil Law.** The civil law system is the most widespread legal system in the world. The distinguishing feature of the civil law system is that its legal authority is organized into written codes. The civil law system is derived from Roman law and is found in much of continental Europe, Central America, South America, and several other regions.

2. **Common Law.** In contrast to the codified laws of the civil law system, doctrines and rules developed over time by judges serve as «legal precedent» in the common law system. The common law system is derived from the English common law and is found in many parts of the English speaking world such as Australia, Canada, England, the United States, Wales, and other countries.

3. **Customary Law.** Customary law is rooted in the customs of a community. Common attributes of customary legal systems are that customs may be unwritten, customs govern social relations, and customs are widely accepted by the community's members. Customary law systems are found in Africa, the Pacific Islands, and elsewhere.

4. **Religious Law.** The religious law system is a legal system that is based on religious beliefs or texts. Islamic law (or Sharia law) is the most widespread religious law system, and it governs all aspects of public and private life. Islamic law systems are found throughout Africa, the Middle East, Central Asia, and South Asia, and their laws widely vary among Muslim countries.

5. **Mixed Law.** Mixed law refers to a combination of elements of the legal systems described above. In the United States, the most noteworthy mixed law system is found in the State of Louisiana, which has elements of both civil law and common law.

1. Compound 10 questions according the text.

2. Translate into English and give the English definition:

– здатність своїми діями набувати для себе цивільних прав і самостійно їх здійснювати, а також здатність своїми діями створювати для себе цивільні обов'язки, самостійно їх виконувати та нести відповідальність у разі їх невиконання (ст. 30 ЦК). Зміст дієздатності містить у собі такі складові: здатність особи своїми діями набувати цивільні права та створювати для себе цивільні обов'язки; здатність самостійно здійснювати цивільні права та виконувати обов'язки; здатність нести відповідальність за цивільні правопорушення. Цивільне законодавство розрізняє декілька різновидів дієздатності залежно від віку особи та її психічного стану, оскільки під час здійснення цивільних прав та обов'язків особа повинна розуміти значення та можливі наслідки своїх дій. Цивільну дієздатність має фізична особа, яка усвідомлює значення своїх дій і може керувати ними. Дієздатність є невідчужуваною від особи, її обсяг установлюється ЦК і може бути обмежений виключно у випадках і в порядку, встановлених законом. Примусове обмеження дієздатності можливе лише за рішенням суду у випадках, встановлених законом. ЦК визначає такі різновиди дієздатності: 1) часткова цивільна дієздатність фізичної особи, яка не досягла 14 років (малолітніх); 2) неповна цивільна дієздатність фізичної особи віком від 14 до 18 років

(неповнолітніх); 3) повна цивільна дієздатність. Передбачено також визнання особи недієздатною та обмежено дієздатною за рішенням суду і на підставах, визначених законом;

– форма вираження цивільного права як галузі права. Сукупність цивільно-правових актів утворює цивільне законодавство. Цивільне законодавство має свою структуру, елементами якої є – закони, а також підзаконні нормативно-правові акти. Основу цивільного законодавства України становить Конституція 1996 року, яка має найвищу юридичну силу. Після Конституції вищу юридичну силу мають закони. Закон – це нормативно-правовий акт, що ухвалює ВРУ. Основним актом цивільного законодавства України є ЦК України, затверджений ВРУ 16 січня 2003 року, що набуває чинності з 1 січня 2004 року. Він є єдиним кодифікованим актом цивільного законодавства. ЦК України складається з 6 книг, 90 глав, 1 308 статей. Він побудований за пандектною системою, відповідно до якої норми, які можуть бути застосовані під час регулювання будь-яких суспільних відносин, що становлять предмет цивільного права, подані окремою книгою під назвою «Загальні положення». Актами цивільного законодавства є також інші кодекси і закони України, що видаються відповідно до Конституції та ЦК України. Вперше ст. 4 ЦК закріпила, що в разі подання до ВРУ проєкту закону, який регулює цивільні відносини інакше, ніж цей Кодекс, суб'єкт законодавчої ініціативи зобов'язаний одночасно подати проєкт закону про внесення змін до ЦК. Поданий законопроєкт розглядає ВРУ одночасно з відповідним проєктом закону про внесення змін до ЦК. Відповідно до ст. 10 ЦК міжнародний договір, що регулює цивільні відносини, згода на обов'язковість якого надана ВРУ, є частиною національного цивільного законодавства України. Якщо в чинному міжнародному

договорі України, згода на обов'язковість якого надана ВРУ, містяться інші правила, ніж ті, що встановлені актами цивільного законодавства, застосовуються правила відповідного міжнародного договору. Елементами структури цивільного законодавства, як уже відзначалося, є також підзаконні акти, серед яких, насамперед, потрібно назвати укази Президента України. Відповідно до ч. 3 ст. 106 Конституції Президент України на основі та на виконання Конституції та законів України видає укази і розпорядження, які є обов'язковими до виконання на території України. Актами цивільного законодавства є постанови КМУ, який згідно зі ст. 117 Конституції в межах своєї компетенції видає постанови і розпорядження, що є обов'язковими до виконання. КМУ ухвалює значну кількість постанов і розпоряджень із широкого кола питань, пов'язаних із регулюванням майнових та особистих немайнових відносин, учасниками яких можуть бути як юридичні, так і фізичні особи. Серед підзаконних актів провідне місце належить відомчим нормативним актам, тобто нормативно-правовим актам міністерств та інших центральних органів виконавчої влади. Під законними потрібно визнати і нормативно-правові акти ВР АРК та рішення Ради міністрів АРК, оскільки вони згідно зі ст. 135 Конституції не можуть суперечити Конституції та ухвалюються відповідно до Конституції, законів України, актів Президента України і КМУ та на їх виконання. Міністерства, інші центральні органи виконавчої влади України можуть видавати акти, що регулюють цивільні відносини, лише у випадках і в межах, встановлених законом (ч. 5 ст. 4 ЦК). Цивільне законодавство має два рівні: закони та підзаконні акти. Підзаконні акти, зі свого боку, теж мають декілька рівнів. Саме через це постає питання про визначення ядра цивільного законодавства, і таким ядром є ЦК України;

– сукупність цивільно-правових норм, закріплених у Цивільному кодексі України, інших законодавчих і нормативно-правових актах, які регулюють на засадах юридичної рівності, диспозитивності майнові відносини товарно-грошового характеру, а також особисті немайнові відносини (як пов'язані, так і не пов'язані з майновими) за участю суб'єктів (фізичних і юридичних осіб, держави, територіальних громад), які мають самостійний організаційно-майновий статус, діють вільно і на власний розсуд здійснюють свої права, вступають у правовідносини, а також несуть цивільно-правову відповідальність за винну протиправну поведінку перед потерпілим (боржником) за допущене порушення.

LEGAL PROCEDURE

UNIT 2

Vocabulary

1) процедурні питання	7) порушувати цивільну справу	13) відповідач, обвинувачений
2) поданий (позов)	8) предметна юрисдикція (підсудність)	14) позивач, заявник
3) закон про давність позову	9) грошова юрисдикція (підсудність)	15) надаватися
4) кримінальні переслідування	10) територіальна юрисдикція	16) резонансний (жахливий) злочин
5) місце розгляду; судовий округ, у якому повинні слухати справу	11) географічні межі поширення, географічний кордон	17) розголос
6) місце розташування	12) комерційна операція, угода, контракт	18) збуджувати, збурювати
–	–	19) обвинувачений

1. Read and translate the text and pay attention to the vocabulary words.

Where and When Cases must be brought. The first procedural questions (l) in any case are: where must the case be filed (2), and when must the case be filed. Statutes of limitations (3) concern «when» cases must be filed. Jurisdiction governs the power of Ohio's courts to deal with different types of civil

lawsuits and criminal prosecutions (4). Venue (5) concerns the location (6) of the particular court where a case must be tried. Statutes of limitations provide time limits for bringing civil lawsuits (7) and criminal prosecutions.

Jurisdiction. Generally, jurisdiction means the power of a court. Different courts have different powers, and a case can be brought only in a court with authority to deal with it. There are several kinds of jurisdiction. «Subject matter jurisdiction» (8) is the power of a court to deal with particular kinds of cases. Monetary jurisdiction» (9) is the minimum or maximum dollar limit on civil cases that a particular court can handle. «Territorial jurisdiction» (10) is the geographic extent (11) of a court's power. A court has territorial jurisdiction over civil cases when the incident or transaction (12) on which the case is based occurred in the court's territory or, in some cases, when the defendant (13) or the plaintiff (14) lives in the court's territory. In criminal cases, a court generally has jurisdiction when the crime, or any essential part or «element» of the crime, occurred in the court's territory.

Venue. Whereas jurisdiction refers to the power of a court to try a case, venue refers to the place where it is to be tried. Usually, venue follows territorial jurisdiction in both civil and criminal cases. Venue can be changed in criminal cases when the change is necessary to secure a fair trial. A change of venue might be granted (15), for example, in the trial of a particularly heinous crime (16) where publicity (17) has inflamed (18) local public opinion against the accused (19).

2. Translate into English using the vocabulary.

1. «Грошова юрисдикція» – це той мінімум або максимум грошової суми позовів у цивільній справі, яку може розглядати суд. «Територіальна юрисдикція» – це географічні межі поширення повноважень суду.

2. Тоді як юрисдикція стосується повноважень суду щодо розгляду справи, місце розгляду – це судовий округ, де справу слухають.

3. Місце слухання справи – це розташування певного суду, де мають розглядати справу. Закони про давність позову визначають часові обмеження щодо порушення справи та кримінального переслідування.

4. Зміна місця слухання справи може відбуватися, наприклад, у разі судового розгляду резонансного злочину, коли розголос справи збурює громадську думку проти обвинуваченого

5. Загалом термін «юрисдикція» означає «повноваження суду». Різні суди мають різні повноваження і справи можуть порушувати лише в тому суді, який має відповідні повноваження.

6. Відповідач у судовій справі має право знати, що проти нього порушена справа, і причину такого порушення. Відповідач може спробувати відхилити скаргу.

7. Позовна заява має містити: (1) стислий і зрозумілий виклад обвинувачення, з якого було б видно, що заявник за законом має право на засіб судового захисту; (2) вимогу (прохання) мати такий засіб судового захисту, на який, як вважає позивач, він має право.

8. Повістка та додана до неї копія позовної заяви разом називаються «виклик до суду». Вручення повістки та копії позовної заяви називається «врученням виклику до суду». Документи можуть передаватися особисто відповідачу, їх можуть принести до оселі відповідача або ж надіслати рекомендованим листом.

9. Цивільна справа розпочинається тоді, коли заявник, або позивач подає до суду свою позовну заяву в письмовій формі.

3. Translate into Ukrainian.

– certified mail;
– a written statement of the claim;
– to challenge the complaint;
– a summons is issued to the defendant;
– a law suit is started;
– injunction;
– to file a written pleading;
– to lose by default;
– to be notified of the suit;
– the Ohio Rules of Civil Procedure;
– is entitled to know;
– the summons and the attached complaint are known as «process»;
– refrain from doing a certain thing;
– service of process;
– a court order;
– the exact nature of the claim;
– a demand (or «prayer»).

4. Translate the text and make a short summary of it

Important Legal Concepts

In addition to the type of legal system and the type of court hearing the matter, there are some basic legal concepts that will affect how a criminal prosecution proceeds. Statutes of Limitation In the common law legal system, «statutes of limitation» are laws that limit the government's ability to bring charges or start a prosecution after a certain period of time. Statutes of limitation encourage law enforcement officials to promptly investigate suspected criminal or terrorist activity and help cases to be more quickly decided, closed and resolved.

Civil law legal systems have «prescription periods», which work much the same as statutes of limitation but limit the time within which criminal prosecutions must be completed. Religious legal systems also have similar concepts. The length of a statute of limitation varies by country and the type of offense. If too much time has elapsed since the terrorist attack, prosecutors may not be able to bring some charges because of these types of laws. Some crimes have no statute of limitations.

Plea Bargains

In the United States, plea bargains are used frequently and have proven to be an efficient and effective way of holding defendants accountable for their crimes. In a typical plea bargain, the accused agrees to admit to committing a crime in exchange for some concession from the prosecution, such as dropping some charges or agreeing to a certain punishment. If a case is resolved through a plea bargain, there is no trial and usually no appeal. The U.S. is unique in its use of plea bargains, and most other countries around the world have been slow to adopt this tool. Please do not be surprised if there is no discussion of a plea bargain, or even a possibility of one.

Plea bargains may not be an option in the country where the case is being investigated and tried.

Sentences

If there is a conviction in your case (after trial or after an accused pleads guilty), the court will impose a sentence, which is the punishment the convicted offender will receive. Sentences for terrorism cases vary from country to country, and can range from a short time in jail to the death penalty. The country's law may or may not allow a victim to offer a statement about the impact of the crime, which in some systems can include the victim's opinion about the appropriate sentence. Either way, the sentence may not be what a victim thinks it should be.

Sentencing laws can be complex, and can allow for prisoners to get reductions in their sentences if they work, exhibit good behavior, or reach a certain age while in prison. In many countries, there is a practice to release a prisoner after a certain length of time regardless of the formal sentence. It is also possible for foreign governments to grant prisoners a «remission», which is a reduction in the sentence usually resulting in release. Remissions may happen during a major religious holiday or for other political reasons. If a prison sentence is imposed, you should be aware that other countries may not determine or keep track of prison release dates in the same way the U.S. does. This lack of information can be frustrating and concerning for victims. Reductions can be very hard to keep track of, and the country may not be equipped to keep accurate records. In some past cases, foreign governments have released prisoners long before their official release date because of prisoner illness, new laws or prisoner exchanges.

5. Match the phrases in column A with their equivalents in column B.

1. When a complaint or answer is vague, the opposing party can file a motion to make the complaint or answer definite and certain	A. У разі, коли позовна заява або відповідь на неї не містять чіткого обґрунтування, супротивна сторона може подати клопотання щодо чіткішого і конкретнішого формулювання звинувачення чи заперечення
2. His answer might deny everything in the complaint, admit some of	B. Іноді позивач або відповідач можуть подавати позовну заяву, додаткову

the plaintiffs claims and deny the rest, or admit most or all of the plaintiffs claims	до головної справи і спрямовану проти співпозивача або співвідповідача; така заява викладається у «перехресному позові». Якщо справа зрозуміла, сторона у справі може подати клопотання про розгляд справи за процедурою спрощеного судочинства
3. Sometimes a plaintiff or defendant may have a claim, ancillary to the main lawsuit against a co-plaintiff or a co-defendant; this claim is stated in a «crossclaim». If the case is clear, a party can file a motion for summary judgment	C. Якщо відповідач вважає, що він є потерпілою стороною, він може відповісти на звинувачення позивача власним звинуваченням, яке називається «зустрічним позовом»
4. When a pleading contains irrelevant material, the opposing party can file a motion asking that the irrelevant material be removed	D. У відповіді він може заперечити все, зазначене в позовній заяві, визнати деякі звинувачення заявника і заперечити решту звинувачень або ж визнати справедливість більшої частки звинувачень чи всіх звинувачень

TASKS FOR INDEPENDENT WORK

Проблеми перекладу лексичних одиниць, що позначають норми ведення цивільної справи

1. Read and make a synopsis.

Труднощі, пов'язані з відтворенням правничої лексики, виникають не лише під час перекладу власне тексту. Відомо, що переклад будь-якого тексту починається не із заголовку, а із самого тексту, оскільки зміст і контекст визначають назву заголовка тексту. Проте в межах правничої мови цей процес відбувається інакше. У назві юридичного документа закладено більше, ніж просто семантична одиниця. Вона визначає форму, структуру, клішовані вирази всього документа. Сама лексема «документ» є інваріативною та належить до «пасток внутрішньої форми». Йдеться про широке семантичне поле, яке вимагає високого рівня обізнаності у специфіці різних галузей права. З погляду практики перекладу всі елементи денатотивної системи вихідної мови (лексичні та фразеологічні одиниці) поділяються на дві групи:

1) ті, що вже мають відповідники («перекладні еквіваленти»);

2) ті, що не мають відповідників у цільовій мові.

Перші називаються одиницями, що мають перекладні елементи в мові перекладу, а другі – безеквівалентними одиницями. Еквівалентні одиниці поділяються на одноеквівалентні (ті, що мають тільки один перекладний відповідник) і багатоеквівалентні (ті, що мають два або більше перекладних відповідників). Варто пам'ятати, що йдеться про словникові відповідники, тоді як відповідник певного слова чи фрази оригіналу в тексті може бути тільки один із кількох. Еквівалентні лексичні та фразеологічні одиниці не повністю подані в перекладних словниках і в

текстах, але існують у мові перекладу як перекладні еквіваленти. Неоднозначні слова мають кілька перекладних відповідників відповідно до кількісті їхніх значень (лексико-семантичних варіантів). Відповідники неоднозначного слова називаються варіантними відповідниками. Під варіантним відповідником йдеться про один із можливих варіантів перекладу слова (терміна). Варіантний відповідник передає зазвичай якесь одне значення слова вихідної мови, тобто кожний варіантний відповідник є перекладним еквівалентом якогось одного лексико-семантичного варіанта багатозначного слова. Відповідно кожний із цих лексико-семантичних варіантів має свій перекладний еквівалент.

Варіантні відповідники – це найпоширеніший вид перекладних відповідників, оскільки більшість слів (зокрема, значна кількість термінів) є однозначними, отже, потребують під час перекладу вибору або утворення відповідника лексико-семантичного варіанта слова (терміна). Варіантні відповідники можуть бути зафіксовані в перекладних словниках і тоді вони називаються словниковими варіантними відповідниками. Але перекладачі не завжди мають справу лише зі словниковими варіантними відповідниками – трапляється так, що словники не містять деяких відповідників неоднозначного слова або словникові варіанти-відповідники певного слова взагалі не зафіксовані в словниках.

Транскодування – це такий спосіб перекладу, коли звукову або графічну форму слова вихідної мови передають засобами абетки мови перекладу.

Розрізняють чотири види транскодування:

1) транскрибування (коли літерами мови перекладу передають звукову форму слова вихідної мови);

2) транслітерування (слово вихідної мови передають по літерах);

3) змішане транскодування (переважне застосування транскрибування з елементами транслітерування);

4) адаптивне транскодування (коли форма слова у вихідній мові дещо адаптується до фонетичної або граматичної структури мови перекладу).

Транскодовані терміни, що вже міцно закріпилися в мові перекладу, у словниках можна подавати без додаткового описового перекладу. Транскодування неологізмів відбувається в тих випадках, коли в культурі і, зокрема, у науці країни мови перекладу відсутнє відповідне поняття і відповідний перекладний еквівалент, а перекладач не може підібрати слова в мові перекладу, які б адекватно передавали зміст поняття і задовольняли вимоги до термінотворення. Оскільки під час транскодування транскодоване слово має одне значення, то такий спосіб перекладу доцільно застосовувати в тих випадках, коли в мові перекладу необхідно створити чітко однозначний термін. Особливо часто транскодування термінів відбувається, коли термін у мові перекладу складається з міжнародних терміноелементів латинського або давньогрецького походження.

Калькування (дослівний, або буквальний переклад) – це прийом перекладу нових слів (термінів), коли відповідником простого чи здебільшого складного слова (терміна) вихідної мови в цільовій мові вибирають, зазвичай, перший за порядком відповідник у словнику. Калькування як прийом перекладу переважно застосовують під час перекладу складних слів (термінів). Його можуть застосовувати також стосовно тільки одного з компонентів складного слова (терміна). Досить часто калькування застосовують під час перекладу складних термінів, утворених за допомогою поширених споріднених слів. Калькування можна застосовувати тільки за умови

збереження перекладним відповідником норми вживання і сполучуваності слів в українській мові.

Контекстуальна заміна – це така лексична перекладацька трансформація, унаслідок якої перекладним відповідником стає слово або словосполучення, що не є словниковим відповідником і що підібрано із врахуванням контекстуального значення слова, контексту вживання та мовленнєвих норм і традицій мови перекладу. Варто зазначити, що не існує точних правил створення контекстуальних замін, оскільки переклад слів у таких випадках залежить від контексту їхнього вживання. Існують чотири основних прийоми створення контекстуальних замін: смислова диференціація, конкретизація, генералізація значення та антонімічний переклад (формальна негативація).

Крайнім випадком семантичного розвитку є так званий антонімічний переклад. Коли форма слова або словосполучення замінюється на протилежну (позитивна – на негативну і навпаки), а зміст одиниці, що перекладають, залишається переважно подібним. По суті, термін «антонімічний переклад», який трапляється в перекладознавчій літературі, є неточним, оскільки слово, що перекладається, не змінюється на антонім у мові перекладу, а змінює лише форму на протилежну, тоді як його зміст, значення залишаються без особливих змін. Тому для позначення цього способу перекладу краще використовувати термін «формальна негативація», у якому підкреслена саме зміна форми слова або словосполучення і йдеться про антонімічність як таку, що пов’язана із зміною змісту на протилежний.

Означена трансформація подана трьома видами: 1) негативація (слово або словосполучення без формально вираженої суфіксом або часткою заперечувальної семи замінюється в перекладі на слово із префіксом -не або

словосполучення з часткою не); 2) позитивація (слово або словосполучення з формально вираженою заперечувальною семою змінюється в перекладі на слово або словосполучення, яке не містить формально вираженого негативного компонента); 3) анулювання двох наявних у реченні негативних семантичних компонентів. У певних контекстах деякі англійські слова, що не мають у своєму складі заперечувальних морфем, але містять, зазвичай, заперечувальний семантичний компонент можуть перекладатися подібними за значеннями словами з префіксом не- або сполученнями частки не з антонімічним відповідником слова, що перекладають. Тому формальна негативація є одним із прийомів реалізації контекстуальної заміни, тобто такої лексичної заміни, що можлива лише в певному контексті.

Описовий переклад – це такий прийом перекладу нових лексичних елементів вихідної мови, коли слово, словосполучення, термін «фразеологізм» замінюється в мові перекладу словосполученням, яке адекватно передає зміст цього слова або словосполучення (терміна).

До описового перекладу застосовують такі вимоги: 1) переклад повинен точно передавати основний зміст позначеного неологізмом поняття; 2) опис не повинен бути надто докладним; 3) синтаксична структура словосполучення не повинна бути складною. У разі застосування описового перекладу важливо слідкувати за тим, щоб словосполучення в мові перекладу точно і повно передавало всі основні ознаки поняття, позначеного словом оригіналу.

Перед застосуванням цього прийому перекладу неологізмів необхідно виконати попередню умову правильності перекладу неологізмів – переконатися, що в мові перекладу відсутній перекладний відповідник (зрозуміло, що перекладні словники ще не могли його

зафіксувати, проте він може бути зафіксований, зокрема, у вже перекладеній нещодавно літературі), щоб правильно розкрити зміст позначеного неологізмом поняття. Порівняно із транскодуванням завдяки описовому перекладу досягнута більша прозорість змісту поняття, позначеного відповідником неологізму.

Водночас описовий переклад характеризується такими недоліками: 1) у разі його застосування можливе неточне або нечітке тлумачення змісту поняття, позначеного неологізмом; 2) описове словосполучення порушує таку вимогу до термінів, як стислість (а тому такі багатослівні терміни не мають деривaційного потенціалу, тобто від них складно, якщо взагалі можливо утворити похідні терміни).

Лексичний елемент, як відомо, перекладається не окремо, сам собою, в ізоляції від речення та тексту, де він вжитий, а в сукупності його контекстуальних зв'язків і функціональних характеристик. Тільки так можна досягти точності та адекватності перекладу слів (зокрема й термінів). Чим більше враховує перекладач усі характеристики слова, що перекладає, тим адекватнішим буде його переклад.

Важливим способом вибору контекстуального відповідника слова є перекладацька лексична трансформація конкретизації значення, зумовлена розбіжностями у функціональних характеристиках словникових відповідників лексичних елементів оригіналу та традиціях мовлення. Конкретизація значення – це лексична трансформація, унаслідок якої слово (термін) ширшої семантики в оригіналі замінюють словом (терміном) меншої семантики. Цей спосіб перекладу переважно застосовують під час перекладу слів із дуже широким, навіть можна зауважити, розмитим, значенням: thing, matter, concern, to come. Необхідно зазначити, що англійські слова широкої

семантики можна перекладати на українську мову за допомогою не тільки конкретизації, а й вилучення їх у перекладі загалом, а також за допомогою використання їхніх словникових відповідників. Потрібно пам'ятати, що застосування конкретизації в перекладі лексики вимагає творчого підходу з боку перекладача.

У процесі перекладу лексичних елементів перекладні відповідники можуть утворюватися завдяки не тільки звуженню значення англійських слів, а й розширенню значення. Лексичною перекладацькою трансформацією, що одночасно використовують, є генералізація, унаслідок якої слово з вужчим значення, змінюють у перекладі на слово із ширшим значенням, нерідко гіпонімом.

Трансформацію генералізації звичайно використовують під час перекладу загальнонародного та загальнонаукового шарів лексичного складу наукових і технічних текстів. Оскільки її застосування може призводити до певної втрати точності інформації, використовувати її потрібно обачно, тільки в тих випадках, коли вживання в перекладі словникового відповідника може призвести до порушення граматичних або стилістичних норм мови перекладу.

Як відомо, перекладач не має права щось додавати від себе до змісту тексту, що перекладає. Усі змістовні зміни, зокрема додавання, потрібно робити за межами тексту перекладу – у виносках, посиланнях, коментарях, розміщених поза текстом, що перекладається. Треба нагадати, що зміст кожного тексту складається з експліцитної (безпосередньо вираженої) та імпліцитної (невираженої в поверховій структурі) частин.

Під час перекладу певні фрагменти експліцитного сенсу оригіналу можуть переходити в імпліцитну частину тексту перекладу і, навпаки, певні фрагменти імпліцитного сенсу можуть знаходити в тексті перекладу вираження на

поверхні. Тому коли йдеться про додавання як лексичну трансформацію, заазначають про експліцитне вираження частини імпліцитного сенсу оригіналу в тексті перекладу.

Як можна бачити, тут не йдеться про зміни змісту оригіналу через вилучення частини або додавання загального сенсу оригіналу. Трансформація додавання полягає у введенні в переклад лексичних елементів, відсутніх в оригіналі, з метою правильного передавання змісту речення (оригіналу), що перекладається, або дотримання мовленнєвих і мовних норм, що існують у культурі мови перекладу. Оскільки трансформація додавання зумовлена необхідністю дотримання норм мови перекладу, її застосування потребує знання мови перекладу та її норм. Через особливості дії принципу мовленнєвих зусиль в англійській мові та у зв'язку з тим, що складні слова (терміни) можуть утворюватися на основі скорочених розмовних, жаргонних або професійних форм, під час їхнього перекладу доводиться вводити певні додаткові лексичні елементи, відсутні у структурі таких складних слів (термінів), з метою дотримання норм мови перекладу та забезпечення більшої вмотивованості (зрозумілості) перекладених слів (термінів).

Здебільшого англійське слово однієї частини мови перекладається на українську мову словом тієї самої частини мови. Однак така однозначна відповідь у перекладі буває не завжди: через різні лексичні і граматичні особливості мов оригіналу та перекладу і розбіжності в мовленнєвих нормах, перекладачу доводиться застосовувати трансформацію заміни частини мови, коли, наприклад, іменник замінюється під час перекладу на прикметник, а прикметник – на дієслово тощо. Таку трансформацію можна застосовувати до слів майже всіх частин мови, однак здебільшого це спостерігається в таких частинах мови, як іменник, дієслово, прикметник і

прислівник. Заміна слова однієї частини мови на слово іншої частини мови може супроводжуватися частковою або повною перебудовою структури речення.

Деякі англійські дієслівні словоформи, відсутні в українській мові (активний дієприкметник теперішнього часу та пасивний дієприкметник теперішнього часу), замінюються у перекладі на особові форми дієслів у складі підрядного речення. Трансформацію заміни застосовують у тих випадках, коли збереження частиномовної характеристики слова, призводить до порушення граматичних норм мови перекладу та норм слововживання. Сутність трансформації перестановки (пермутації) полягає в тому, що під час перекладу лексичні елементи міняються місцями. У науково-технічному перекладі таку трансформацію застосовують досить рідко.

CIVIL LEGISLATION

UNIT 3

Vocabulary

impermissibly	ownership
permissibility	right sin rem
to permiss	individualized creativity
arbitrary	entrepreneurial activities
unimpeded exercise	undertaking
to exercise a law rights	to undertake
extent	performance of work
to acertain extent	capacity
in accordance with	inaliable

1. Translate the text.

Article 1. Foundation Principles of Civil Legislation

1. Civil legislation is founded on the recognition of the equality of participants in the relations which regulate the inviolability of property, the freedom of contract, the impermissibility of arbitrary interference by anyone whomsoever in private matters, the necessity for unimpeded exercise of civil law rights, and securing the restoration of violated rights as well as their defence in the courts of law.

2. Citizens (physical persons) and legal persons acquire and exercise law rights through their own free will and in their own interest. They are free in establishing their rights and responsibilities on the basis of a contract and in determining the conditions of the contract to the extent that such conditions do not contradict legislation. Civil law rights may be limited on the basis of federal law and only to the extent that is necessary for purposes of defending the foundations of constitutional order, public morality, health, or the rights and lawful interests of other

persons, or ensuring national defence and the security of the state.

3. Goods, services and capital shall vote freely throughout the entire territory of the Ukraine. Limitations on the movement of goods and services may be imposed in accordance with federal law, if such is necessary for ensuring public safety, defending the life and health of persons, protecting the environment and cultural treasures.

Article 2. Relations Regulated by Civil Legislation

1. Civil legislation determines the legal status of participants in civil law relations, the grounds for the creation and procedure for the exercise of the rights of ownership and other rights in rem, rights to the result of intellectual activities and similar forms of individualized creativity (intellectual rights) regulates contractual and other obligations, as well as other property and related personal (nonmaterial) relations, based on equality, autonomy of will and proprietary independence of their participants. Citizens (physical persons) and legal persons are the participants in relations regulated by civil legislation. Civil legislation regulates relations between persons engaged in entrepreneurial activities or participating in such activities, based on the fact that entrepreneurial activities are independent activities undertaken at one's own risk and directed at the systematic making of profit from the use of property, sale of goods, performance of work or provision of services by persons registered in this capacity in accordance with the procedure stipulated by law. Rules established by civil legislation are applicable to relations involving the participation of foreign citizens, stateless persons and foreign legal persons, unless otherwise provided by federal law.

2. Inalienable human rights and freedoms and other nonmaterial values are protected by civil legislation, unless otherwise indicated by the nature of these nonmaterial values.

3. Civil legislation is not applicable to property relations based on administrative or other governmental subordination of one party to another, including tax and other administrative relations, unless otherwise provided by legislation.

2. Translate into Ukrainian

– inviolability of property;
– restoration of violated rights;
– to contradict legislation;
– legal status of participants;
– entrepreneurial activities;
– profitmaking;
– stateless persons;
– 8) inalienable human rights and freedoms;
– tax and other administrative relations;
– proprietary independence;
– foundations of constitutional order.

3. Answer the questions

– What comprises the foundation of Civil Legislation?
– How do physical persons and legal persons acquire and exercise civil law rights?
– In what cases may civil rights be limited?
– What provision is analogous to the interstate commerce clause in American constitutional law?
– What does civil legislation determine?
– Who are the participants in relations regulated by civil legislation?
– What does civil legislation regulate?
– How are rules established by civil legislation applied?
– How are inalienable human rights and freedoms protected?

4. Replace the Ukrainian phrases in brackets with the corresponding English equivalents from the text.

1. Civil legislation *(ґрунтується на*) the recognition of the equality of participants in the definite kinds of relations.

2. They are free in establishing *(своїх прав і обов'язків*) on the basis of a contract and *(у визначенні умов договору)* to the extent that such conditions *(не суперечать законодавству).*

3. Goods and services *(вільно переміщаються всією територією України).*

4. The Ukrainian *(суб'єкти)* may also participate in relations which are regulated by civil legislation.

5. Rules established by civil legislation *(застосовують до відносин за участю)* foreign citizens, stateless persons and foreign legal persons.

6. *(Невідчужувані права і свободи людини)* and other nonmaterial values are protected by civil legislation.

7. Civil legislation is not applicable to property relations *(заснованих на адміністративному або іншому владному підпорядкуванні)* of one party to another.

Vocabulary

extenuating curcumstances	special intent crime
notice of motion	tenancy
beagle motion	testify
bail review	waiver and estoppel
bail notice	warrant
capasity	equity
judicial notice	fails pretenses

issue	keeper
inmate	knowingly
indemnity	law clerks
opening argument	limine motion
own recognizance	magistrate
probation before judgment (PBJ)	order to show cause
adoptive admission	over act
statement of fact	penalty

5. Complete sentences 1–10 with a word or expression from the vocabulary table. Make written translation of the sentences.

1. Limiting the legal capacity and dispositive legal _____ of a citizen is prohibited by Article 23 of the Civil Code.
2. The _____ for offences under this section is three months imprisonment.
3. For Mr. Flamberg, this acknowledgement is _____and is not in any way a determination on his part.
4. The monthly _____is paid by the State budget, through transfers from the State budget to local communities' budgets.
5. He comes on _____simply to get close enough to strike.
6. The court took _____into account before imposing a minimal fine.
7. The adoption of _____laws can protect tenants from eviction and from excessive levels of rent.

8. That meant that the judges of the Court, unlike those of other international courts and tribunals and even of higher national courts, did not have the support of any personal _____.

9. With no priors, he's out two hours after the_____.

10. The person he was going to _____against fled.

6. Make written translation of the text.

The Police

Americans have developed great expectations of the police, and regardless of the time of day, the weather, or the inconvenience citizens expect them to respond to calls for assistance. A detailed listing of the expectations placed on the police is not possible here, but in general people want them to function in the following ways:

To prevent and control «serious crime», that is, any conduct widely recognized as threatening our lives or property;

to assist and protect victims of crime, especially those in danger of physical harm;

to protect constitutional guarantees, including those of free speech and assembly;

to facilitate the movement of people and vehicles;

to assist addicts mentally ill, physically disabled, old, young, and others who cannot care for themselves;

to resolve conflict between individuals, groups, and anyone in conflict with the government;

to identify problems before they become more serious for individuals, police, or the government;

to create and maintain a feeling of security in the community;

If police did not exist to take complaints on a continual basis, 24 hours a day and 7 days a week, to whom would citizens turn? What techniques do police traditionally employ to handle citizens' complaints? How did the police come to be, and what

is the legacy of American policing? Can police departments be better organized so as to better serve the public and solve crime related problems?

Many of our perceptions of how police functioned in the past have been created by novels, television, and the movies. Yet what the police actually do and what they are properly expected to accomplish in American society differ significantly from the popular representations. Most of us have had dealings with the police. We have called on them for assistance, or perhaps we have been arrested. And depending on the nature of our personal experiences with them, each of us has formed opinions about the police.

❖ *TASKS FOR INDEPENDENT WORK*

1. Watch a movie «A Civil Action»

LINK: https://fsharetv.co/movie/a-civil-action-episode-1-tt0120633#

2. Review the film. Choose any 10 min. extract from the movie, copy word for word and translate into Ukrainian. Indicate the time of your selected extract.

CIVIL PROCEDURE IN THE UK

UNIT 4

Vocabulary

proceeding	appellant
to commence	to encourage
conduct (n.)	alternative dispute resolution
a lawsuit	prematurely
to overhaul	arbitration
adversarial	mediation
expert witness	conciliation
to reserve for	adjudication
tribunal	expert determination
tier	injunction
to reverse	a leave
to uphold	to bypass
judicial review	estoppel
to leapfrog	to estop

1. Translate the text.

Differences between Civil and Criminal Procedure

Criminal and civil procedures are different. Although some systems, including the English and French, allow private persons to bring a criminal prosecution against another person, prosecutions are nearly always started by the state, in order to punish the defendant. Civil actions, on the other hand, are started by private individuals, companies or organizations, for their own benefit. In addition, governments (or their subdivisions or agencies) may also be parties to civil actions. The cases are

usually heard in different courts, and juries are not so often used in civil cases.

In Anglo-American law, the party bringing a criminal charge (that is, in most cases, the state) is called the «prosecution», but the party bringing most forms of civil action is the «plaintiff» or «claimant». In both kinds of action the other party is known as the "defendant". A criminal case against a person called Ms. Sanchez would be described as «The People v. (=«versus», «against» or «and») Sanchez», «The State (or Commonwealth) v. Sanchez» or «[The name of the State] v. Sanchez» in the United States and «R. (Regina, that is, the Queen) v. Sanchez» in England. But a civil action between Ms. Sanchez and Mr. Smith would be «Sanchez v. Smith» if it was started by Sanchez, and «Smith v. Sanchez» if it was started by Mr. Smith.

Most countries make a clear distinction between civil and criminal procedure. For example, a criminal court may force a convicted defendant to pay a fine as punishment for his crime, and the legal costs of both the prosecution and defence. But the victim of the crime generally pursues his claim for compensation in a civil, not a criminal, action. In France and England, however, a victim of a crime may incidentally be awarded compensation by a criminal court judge. Evidence from a criminal trial is generally admissible as evidence in a civil action about the same matter. For example, the victim of a road accident does not directly benefit if the driver who injured him is found guilty of the crime of careless driving. He still has to prove his case in a civil action, unless the doctrine of collateral estoppel applies, as it does in most American jurisdictions.

In fact he may be able to prove his civil case even when the driver is found not guilty in the criminal trial, because the standard to determine guilt is higher than the standard to determine fault. However, if a driver is found by a civil jury not

to have been negligent, a prosecutor may be estopped from charging him criminally. If the plaintiff has shown that the defendant is liable, the main remedy in a civil court is the amount of money, or «damages», which the defendant should pay to the plaintiff.

Alternative civil remedies include restitution or transfer of property, or an injunction to restrain or order certain actions. The standards of proof are higher in a criminal case than in a civil one, since the state does not wish to risk punishing an innocent person. In English law the prosecution must prove the guilt of a criminal «beyond reasonable doubt»; but the plaintiff in a civil action is required to prove his case «on the balance of probabilities».

Thus, in a criminal case a crime cannot be proven if the person or persons judging it doubt the guilt of the suspect and have a reason (not just a feeling or intuition) for this doubt. But in a civil case, the court will weigh all the evidence and decide what is most probable.

2. Translate the following words and phrases from the text into Ukrainian and memorize them.

- civil action;
- criminal prosecution;
- service of process;
- pleading;
- motion;
- application;
- deposition;
- disclosure;
- remedy.

3. Find the English equivalents of the words and phrases in the text and use them in your sentences.

– судові витрати;
– компенсація;
– кримінальне переслідування;
– цивільний позов;
– сумнів;
– визнати винним;
– недбалість (повинність);
– відшкодування збитку;
– відновлення власності;
– причина.

4. Answer the questions.

– What is the main difference between civil and criminal procedure?
– May governments be parties to a civil action?
– Are the standards of proof higher in a civil or a criminal case? Why?

5. Read, translate the text and retell it into English.

Civil Procedure Rules in the UK

Civil procedure law, being part of procedural law in general, comprises the rules by which a court hears and determines what happens in civil proceedings. In other words, civil procedure is the body of law that sets out the process followed by courts when hearing cases of a civil nature (civil actions). These rules govern how a lawsuit may be commenced, what kind of service of process is required, the types of pleadings, applications and orders allowed in civil cases, the conduct of trials, various available remedies, and how the courts and clerks must function.

In the UK, in 1999 the Woolf reform radically overhauled procedure in the civil courts. The reforms were brought about to give effect to the Woolf report, which was produced by a committee chaired by Lord Woolf, the Master of the Rolls. This report found that the civil justice system was slow, expensive, bound by archaic procedures, excessively complicated and generally ill-suited to the needs of clients. The adversarial culture of litigation meant that unnecessary delays and the deliberate running up of expenses were often used as a tactic to defeat the other side. In many types of disputes expensive expert witnesses were routinely produced by each side.

Rather than helping the court to resolve a technical problem, these experts were seen as on the side of one or other of the parties and were subjected to partisan pressure by the other party's lawyers. Lord Woolf`s report concluded that civil justice was in a state of crisis and recommendations were made for sweeping changes. Therefore, the Civil Procedure Rules (CPR) were enacted in 1998 to improve access to justice by making legal proceedings cheaper, quicker, and easier to understand for non-lawyers.

The Civil Procedure Rules apply to all cases commenced after April 26, 1999 and are used by several types of courts. The County Court (or the Small Claims Court) deals with all but the most complicated claims for debt repayment, personal injury, breach of contract, family issues, housing disputes, i.e. mostly cases between people or companies who believe that someone owes them money. The magistrates' courts also deal with many civil cases, mostly family matters plus liquor licensing and betting and gaming work. More complex civil cases are reserved for trial in the Divisional Courts of the High Court of Justice – the Family Division, the Chancery (property and money cases) and the Queen's Bench Division (cases involving contracts and negligence).

These also have the capacity to hear appeals from lower courts and tribunals (which decide the rights and obligations of private citizens towards each other and a public authority and are inferior to the courts) and bind the courts below them in the hierarchy. The Civil Division of the Court of Appeal (presided over by the Master of the Rolls), as the second highest tier in the English legal system, can reverse or uphold a decision of the lower civil courts. Because the volume of cases coming to the Court of Appeal is higher than that to the Supreme Court, the Master of the Rolls has been said to be the most influential judge in England.

Finally, the Supreme Court, as the court of last resort, hears appeals on points of law of general public importance from many areas – commercial disputes, family matters, judicial review claims against public authorities and issues under the Human Rights Act 1998. Civil cases may leapfrog from the High Court to the Supreme Court, bypassing the Court of Appeal. Appellants must, however, apply for leave to appeal.

6. Read and translate the text «The Reform of The Civil Procedure in the UK». Answer the questions.

1. What are civil procedure rules?

2. Which drawbacks of the civil justice system were discovered by the committee chaired by Lord Woolf in 1999?

3. What does the adversarial culture of litigation mean?

4. What was the overriding objective of the changes to the civil justice system? What were the main features of the reform?

5. What kind of cases does the highest appellate court hear?

6. a) What can the Civil Division of the Court of Appeal do with the lower court decision? b) Why is the Master of the Rolls said to be the most influential judge in England?

7. a) What kinds of cases are reserved for trial in the High Court of Justice? What do you know about the structure of the

court? b) What capacity does the High Court have? Do cases from the High Court go on appeal directly to the Court of Appeal only?

8. What cases do the magistrates' courts deal with?

9. What other name does the County Court have? What kind of proceedings does it deal with?

10. What types of ADR are there?

The Reform of the Civil Procedure in the UK

One of the main features of the reforms is that the management of the case was removed from the hands of the litigants and passed to the judge. Under this new system of judicial case management the judge's active management of the case requires him to do the following:

– encourage the parties to settle the case or part of the case;

– to identify the true points at issue as early as possible and ensure that issues which do not require litigation are disposed .of before the case is tried;

– and to ensure that the case proceeds quickly and efficiently.

Technology should be used wherever appropriate. As many aspects of the case as possible should be dealt with on the same occasion and the case may be dealt with without the parties having to attend the court. Procedural errors are not to invalidate any part of the proceedings unless the court exercises its discretion to order that they should. Furthermore, accidental errors or omissions can be corrected at any time and the court may do this on its own initiative.

The parties should consider whether some form of alternative dispute resolution (ADR) would be more suitable than litigation, and if so, endeavor to agree which form to adopt. Both the claimant and the defendant may be required by the Court to provide evidence that alternative means of resolving their dispute were considered. The Courts take the view that

litigation should be a last resort, and that; claims should not be issued prematurely when a settlement is still actively being explored. Among the most frequently used ADR methods one should mention the following:

– arbitration, where an independent, impartial third party hears both parties to a dispute and makes a decision to resolve it. However, arbitration is private rather than public, and some forms of arbitration are decided on the basis of documents only. In most cases, the arbitrator's decision is binding on both parties.

– mediation, where the disputants, not the mediator, decide the terms of the agreement. The mediator's role, however, is to check carefully that the parties are able to do what they agree to do. Mediation is now the most popular form of alternative dispute resolution in the UK and Europe as it offers solutions beyond those that a court could ordinarily impose. It is increasingly used in commercial, personal injury and clinical negligence cases.

– conciliation involves an impartial third party helping the parties to resolve their problem. They are free to agree to the resolution or not. In consumer disputes, conciliation is the first stage in the arbitration process and the conciliator is usually a member of the trade association.

– adjudication, where an independent third party considers the claims of both sides and makes a decision. Adjudicators are usually experts in the subject matter in dispute and are not bound by the rules of litigation or arbitration. Their decisions are often interim ones, i.e. they can be finalized using arbitration or another process. Adjudication decisions are usually binding on both parties by prior agreement.

– Expert determination, where an independent third party considers the claims and issues a binding decision. The third party is usually an expert in the subject of the dispute and is chosen by the parties, who agree at the outset to be bound by the

expert's decision. It can be most suitable for determining technical aspects of a complex dispute.

7. Match the definitions in column (B) to the words and phrases in column (A):

A	B
1) to annul by recalling or rescinding	a) directing the course of; managing oppositional; relying on the contest between each advocate representing his or her party`s positions;
2) to keep or maintain in unaltered condition	b) review by a court of law of actions of a government official/entity or of some other legally appointed person/body or the review by an appellate court of the decision of a trial court;
3) to jump across	c) a witness who has knowledge not normally possessed by the average person concerning the topic that he is to testify about the party who appeals a decision of a lower court;
4) to inspire with confidence	d) a sequence of steps by which legal judgments are invoked, dispute resolution processes and techniques that fall outside the government judicial process, a relative position or degree of value in aggraded group;
5) to set aside, esp. for future use	e) any person/institution with the authority to judge, adjudicate on, or determine disputes too early or too hastily; before the expected time

❖ ***TASKS FOR INDEPENDENT WORK***

1. Watch the court hearing at the link
https://www.youtube.com/watch?v=akJm9IfDv1w

2. Write down the court record of this case.

CIVIL PROCEDURE IN THE USA

UNIT 5

1. Read and translate the text. Answer the questions.

– What do you know about Civil Procedure in the United States?

– How do you understand the precedent system used by American lawyers?

– Is the similar kind of dispute resolution used in Ukraine?

Civil Procedure in the United States

Civil procedure in the United States has three distinctive features. First, it follows an adversarial model of dispute resolution. Parties initiate and propel litigation in this model, and the judge, historically and at least in theory, plays the relatively passive role of umpire. The burden is on the parties to present their grievances and defences. Unlike in so-called inquisitorial models of dispute resolution, the judge rarely makes independent inquiries.

The burden is also on the parties to prosecute their grievances and defenses; litigation stops unless the parties pursue it. These characteristics of the system of dispute resolution place on lawyers a heavy responsibility for assuring justice and mastering civil procedure. Second, civil procedure in the United States is dominated by positive law: codified rules enacted by legislatures or their delegates. In contrast, the substantive rules of decision taught in the other traditional first year courses are more often doctrinal: declared by courts as part of the common law.

One difference between positive and common law lies in the materials containing the legal rules. The common-law materials are almost entirely judicial opinions, and the

appropriate inquiry is: what rule best fits the case? In contrast, positive law materials are enacted laws or procedural rules and legislative history. Emphasis in administering the latter is on their plain words and (sometimes) legislative intent, in recognition of the superior lawmaking authority of legislatures and their delegates.

It is not always easy for the first year student to subordinate the comparatively freewheeling policy-oriented analysis of common law taught in many substantive courses to the plain language of positive law, principles of statutory construction, and reading of legislative history. But mastery of the latter lays the groundwork not just for understanding much of civil procedure, but also for understanding upper level law courses. Significantly, practicing lawyers rank «knowledge of statutory law» as the most important knowledge for practice, just ahead of «knowledge of procedural rules». «Finally, the purpose of civil procedure is, as the Federal Rules of Civil Procedure state, «to secure the just, speedy, and inexpensive determination of every action and proceeding». Presumably, decisions are more likely to be just when they reach the merits. But the adversarial character of civil dispute resolution in the United States, have made the goals of «speedy and inexpensive» determinations increasingly difficult to attain. As a result, there is constant pressure for more active judicial management of litigation and for judicial intervention to dispose of the litigation without trial, if possible.

Thus, the 1993 amendment to Rule 1 requires the rules to be «administered» – as well as 259 «construed» (the original term) – «to secure just, speedy, and inexpensive determination of every action and proceeding». No one foresees the replacement of the adversarial model by the inquisitorial model of dispute resolution, yet the former is undergoing significant change in response to widespread criticisms of the cost and efficiency of civil litigation.

2. Find in the text matching words and phrases

- змагальний принцип вирішення спору;
- досудове врегулювання спору;
- скарги і звинувачення;
- досягти мети;
- проста (зрозуміла) мова;
- слідчий принцип вирішення спору.

3. Fill in the gaps in the following sentences with words from the text.

1) As a result of an adversarial model of dispute resolution in the US _____ plays the relatively passive role of umpire.

2) Practicing lawyers consider «knowledge of _____ law» to be more important than «knowledge of _____».

3) It is in so-called _____ models of dispute resolution that the judge makes independent inquiries.

4) The purpose of civil procedure, according to the Federal Rules of Civil Procedure, is «to secure the _____, _____ and _____ determination of every action».

5) As a result of widespread criticism of the cost and efficiency of civil litigation the inquisitorial model of _____ _____ is undergoing significant change.

4. Give the translation of the words and make your own sentences.

дозволяти	схиляти
судовий секретар	примушувати
свідчення (свідка)	запропонований
медична експертиза	одержати, отримувати
збирання документів	під присягою
перелік питань для допиту, опитувальний перелік	свідок огляд, розгляд, перевірка інспектування
визнання, подання інформації	запротокольоване (під присягою) свідчення

5. Fill in the missing words in the text below and then translate into Ukrainian.

TEXT

How a Civil Case Begins

A civil case begins when the _____ (1), or plaintiff, files a written statement of her _____ (2) (complaint) in a court. Her opponent, or the _____ (3), must then be _____ (4) of the suit, and given an opportunity to answer or _____ (5) the complaint. Complaint. The Ohio Rules of Civil Procedure provide that a _____ (6) is started by filing a written _____ (7) called a complaint with the proper _____ (8). The complaint must contain: 1) a short and plain statement of the claim which shows that the plaintiff is _____ (9) to relief under the law; and 2) a demand (or «_____ (10)») for the kind of relief to which plaintiff believes she is _____ (11). This "relief might be pay mint of a specified amount of money, or a court order _____ (12) defendant to do or (13) from doing a certain thing (an «_____ (14)»), or other relief. Different kinds of _____ (15) can be requested in the same complaint. If the plaintiff has not specified the damages sought, then at any time 28 days after

the _____ (16) of a complaint, the defendant may request that plaintiff state the amount of _____ (17) sought. Notice to the Defendant. The _____ (18) in a lawsuit is entitled to know that he has been _____ (19), and why. Accordingly, when a complaint is filed, a summons is _____ (20) to the defendant. The _____ (21) tells the defendant who sued him, and when and where he must _____ (22) himself. The summons also states that if he does not defend himself, he may _____ (23) by default. A copy of the complaint is attached to the summons so that the defendant will know the exact _____ (24) of the claim against him. The summons and _____ (25) complaint are known as «process». The delivery of the _____ (26) and complaint is known as «service of process». Process can be _____ (27) by delivering it direct ly to the _____ (28), leaving it at his home, or sending it to him by _____ (29) mail. Service of _____ (30) must be made within six months after the filing of the complaint

❖ *TASKS FOR INDEPENDENT WORK*

1. Translate the text into Ukrainian

What is civil procedure?

Civil procedure is the body of law governing the methods and practices used in civil litigation. It can be enacted by the legislature or the courts. It can be the rules that are used in handling a civil case from the time the initial complaint is filed through the pretrial discovery, the trial and any subsequent appeal. In a nutshell, it can taken as the methods, procedures, and practices used in civil cases.

How do I know which rules apply to my case?

State and federal courts have different procedure codes. Each state has its own rules of civil procedure which is set out in a separate code of civil procedure. Many of the state civil procedure codes are modeled on the Federal Rules of Civil

Procedure. Generally, if the claim is brought in a state court, state procedural rules apply, and federal procedural rules apply to claims brought in federal court.

Certain types of claims are governed by a separate set of procedural rules. For example, bankruptcy claims are governed by Federal Rules of Bankruptcy Procedure, and appeals are governed by state or federal rules of appellate procedure. Specific courts may also have their own set of local court rules which must be followed, in addition to the applicable state or federal rules. The clerk of courts at a particular court may be asked to direct you to the local court rules.

What happens if I fail to follow a rule of civil procedure?

Failure to follow the requirements of the applicable rules can result in the case being dismissed on procedural grounds. Such failure may also lead to rulings and denials which can harm your case, such as the exclusion of important evidence or the inability to file an important pleading in a case. A failure to comply with the rules may even lead to the imposition of attorney and court fees and sanctions.

2. Make a short synopsis of the text.

CIVIL PROCEDURE IN UKRAINE

UNIT 6

1. Translate the text.

Ukraine's Legal System

Ukraine gained its independence in 1991. As a newly independent country, creating a modern and stable legal system became one of Ukraine's top priorities. Today, after almost seven years of independence, certain progress has been made, but the task is far from complete. The current legal system is still undergoing reforms and lacks essential basic components, such as, for example, a modern civil code.

At the same time, there is a common misperception in the West that a legal system and a legal tradition in Ukraine is totally absent, a sort of *tabula rasa*, a clean sheet of paper. On the contrary, Ukraine always had an established legal system based on continental law. In the Unite States, this system is referred to as a civil law (European) system as opposite to the common law (Anglo-American) system. Therefore, there is no need to build absolutely every legal institution from scratch. Even in the worst days of Communist rule, the core of Ukrainian civil law was quite viable – it was BGB, the German Civil Code. Of course, there was socialist doctrine grafted on top, but the principal areas of law, such as the law of contracts, civil law obligations and liability, torts and labor law, as well as applicability of choice of law and international arbitration to international business transactions, were based on European tradition.

Therefore, the current legal system in Ukraine, despite its flaws and complications, does provide a certain legal basis for doing business and for protection of the legitimate interests of parties involved in it.

Hierarchy of Legislation

As with any civil law system, Ukraine's system is based on laws adopted by the Supreme Rada (the Parliament), with the Constitution being the fundamental law, followed by various codes (Civil Code, Criminal Code, Labor Code, Subsoil Code, etc.), followed by laws of general nature and laws of special nature. The general problem with Ukrainian laws are their often inadequate quality and instability. With different laws sometimes contradicting each other and ever-changing legislation, it is difficult for everyone, including judges, to clearly understand which rules are applicable to a particular relations at a particular time, or even more so, to plan for the future. The main specific problem in the area of civil legislation is the absence of a modern civil code. The civil code, which is currently in effect, was adopted in 1964 and is not sufficient to regulate modern economic relations. There are various drafts of the new Civil Code appearing and reappearing in the Rada from time to time, but unfortunately until now no serious attempt to adopt a new Civil Code has been made.

The implementation of laws adopted by the Rada is based on subsequent edicts, decrees, regulations, etc., adopted by the President, Cabinet of Ministers, National Bank and various ministries (regulations adopted by the ministries are subject to mandatory review and registration by the Ministry of Justice).

It is important to mention one unusual although temporary feature of the current Ukrainian legal system: the President of Ukraine is empowered to issue Presidential Edicts that have in essence the force of a law on economic issues that are not governed by existing laws. Such edicts take effect if they are not vetoed by the Rada within 30 days. This feature was aimed at encouraging a more conservative Rada to speed up adoption of market oriented laws and to allow the President to step in when the Rada was too slow. In practice, however, because such Presidential Edicts often exceed the scope of available authority

(for example governing issues already covered by existing laws), they sometimes add to instability and confusion.

It should be mentioned that the body of regulations adopted by the executive branch suffers from the same problems as the body of laws adopted by the Parliament: insufficient quality, instability and over-regulation.

2. Give the translation of the word combinations and make your own sentences.

Type of punishment

- traffic ticket;
- license suspension;
- fine;
- house arrest;
- custody ['kʌstədɪ];
- confinement cell;
- preventive detention cell;
- indictment [ɪn'daɪtmənt];
- community service;
- jail time;
- death penalty/capital punishment.

3. Translate the text into Ukrainian.

Contract Law

Contract law is perhaps the most basic area of civil law. Every transaction, be it oral or written, for the purchase or sale of goods, land or intangible personal property, involves principles of contract law. Contract law is the foundation upon which other areas of law are built. For example, suppose that two persons want to establish a busiF ness. Whether they propose a partnership, a corporation or any othF er type of organization, their venture involves principles of contract law.

If employees are to be hired, any agreement between employer and employees involves contract law.

The business must operate from premises and use of machinery and equipment, and each of these necessities may be purchased or perhaps leased. Either way, principles of contract law apply. When the organization begins transacting business it must purchase raw mateF rials, and those purchases involve contract law. After the raw materiF als are processed into products, the manufacturer's sales to wholesalF ers, wholesalers' subsequent sales to retailers, and retailers' sales to consumers are all controlled by principles of contract law

4. Match the definition of the words.

1) transaction	a) нематеріальне особисте майно (яке виражене у правах)
2) intangible personal property	b) підприємство
3) e mployer	c) угода
4) venture	d) наймач
5) employee	e) купівля
6) sale	f) працівник
7) purchas	g) продаж

5. Fill in the blanks by words from the text above.

1. Contract law is perhaps the most basic _____ of civil law.

2. Every _____ involves principles of contract law.

3. Contract law is the _____ upon which other areas of law are built.

4. If employees are hired, any _____ between employer and employees involves _____.

5. When the organization begins _____ _____, premises, machinery, equipF ment and raw materials may be _____ or _____.

6. Complete the following sentences by translating the words and expressions in brackets.

1. Contract law is the most basic area of *(цивільного права).*

2. Every oral or written transaction involves principles of *(договірного права).*

3. Two persons propose a partnership, a corporation or any other type of organization when they want to *(розпочати бізнес).*

4. If employer wants to (найняти робітників), the agreement beF tween them *(застосовує принципи договірного права).*

5. When the organization begins its transacting business it must *(орендувати приміщення, придбавати сировину та обладнання).*

6. The manufacturer's sales are controlled by principles of contract law after *(сировина перетворюється на продукцію).*

7. Translate the following words and word combinations: sources of contract law;

- the Uniform Commercial Code (UCC);
- common law;
- contract transactions;
- the sale of land;
- the sale of serF vices;
- personal property; traditional commonFlaw rules;
- applicable provisions of the UCC;
- to apply commonFlaw rules;
- to supersede the common law rules;

– the Restatement of Contracts;
– to prepare a treaF tise;
– to give the generally accepted rules of law;
– to confront with a difficult question;
– to see the issues; to assist a court.

❖ *TASKS FOR INDEPENDENT WORK*

1. Answer the following questions:

– What does contract law stem from?
– What is noted in Chapter I?
– What does the common law govern?
– In what case will commonFlaw rules normally apply?
– When will applicable provisions of the UCC supersede the comF monFlaw rules?
– What is the Restatement of Contracts?
– In what form are these Restatements presented?
– Are the Restatements the actual law?
– When do courts use textbooks and law review articles?
– How can they assist a court?

2. Give English equivalents for the following words and word combinations.

– джерела договірного права;
– Одноманітний торговельний кодекс;
– ухвалити закони штату;
– готувати науковий трактат;
– стикатися із складними питаннями;
– допомагати судам;
– досягти протилежних результатів;
– бути поданим у формі енциклопедії;
– прецедентне право;
– загальне право;

– статутне право.

3. Read the following sentences and decide if they are true or false.

– Contract law stems only from case law.

– According to Chapter I all states have adopted the Uniform ComF mercial Code.

– If the contract involves the sale of lands or the sale of services, traditional common law rules will normally apply.

– This Restatement of Contracts is a treatise prepared by the AmerF ican Law Institute.

– The Restatements give the generally accepted rules of law on speF cific topics.

– Textbooks and law review articles are not themselves the law.

4. Read and memorize the active vocabulary to the text Legal Professions in Ukraine.

– Law – закон, право;
– law – office юридична установа;
– lawyer – юрист, адвокат, правник;
– to train specialists – готувати спеціалістів;
– professional training – професійна підготовка;
– court – суд, склад суду;
– procurator – прокурор;
– Public prosecutor (A.E.) – прокурор;
– procurator's office – прокуратура;
– the Bar – адвокатура;
– notary – нотаріус;
– notary office – нотаріальна контора;
– Ministry of the Interior – Міністерство внутрішніх справ;
– Judge – суддя;

– to investigate /thoroughly/ – розслідувати / ретельно/;
– investigator – слідчий;
– to deal with human destiny – мати справу з людськими долями;
– to serve – служити;
– servant – слуга;
– in contrast to – на відміну від;
– relations – відносини;
– interrelation – взаємини;
– comradely cooperation – товариське співробітництво;
– survive – пережити;
– survival – пережиток;
– mind – розум, думка;
– to display oneself – проявляти (себе);
– to wage a /decisive/ struggle – вести (рішучу) боротьбу;
– to punish – карати;
– punishment – покарання;
– inevitability of punishment – не уникнення / невідворотність покарання;
– to educate – виховувати, надавати освіту;
– to reeducate – перевиховувати;
– root – корінь;
– to root out – викорінювати;
– crime – злочин;
– to commit a crime – скоїти злочин;
– to prevent a crime – запобігати злочину;
– decline in crime – зниження (спад) злочинності;
– criminal /n/ – злочинець;
– criminal /a/ – злочинний;
– criminal phenomenon /pl.-na/ – злочинне явище /a/;

– to guarantee – гарантувати, забезпечувати responsible відповідальний;
– to cope with – упоратися з;
– level – рівень;
– general education level – загальноосвітній рівень;
– cultural level – культурний рівень;
– to arm oneself with – озброюватися (чимось);
– legislation in force – чинне законодавство;
– moral qualities – моральні якості;
– true – правильний;
– truth – правда;
– truthful – правдивий;
– honour – честь;
– honest – чесний;
– just – справедливий;
– justice – 1) справедливість, 2) правосуддя, 3) юстиція, 4) суддя (АМ);
– guard – варта, охорона;
– to stand on guard – стояти на варті;
– law and order – правопорядок;
– public order – громадський порядок;
– to master the theory – опанувати теорію.

Legal Professions in Ukraine

One of the most popular professions among the young people of our country is the profession of a lawyer. It is very interesting and important. Our country is creating a *law-governed* state, and lawyers play a very significant role in this process. They are necessary for regulating social relations in the state.

In Ukraine, training lawyers is the task of the law establishments such as Law Academies, Law Institutes, and law faculties of several higher institutions. Graduates of different

law schools can work at the Bar, in the organs of the Prosecutor's Office, in different courts, in notary offices, in legal advice offices, in organs of tax inspection, militia, as well as in different firms, companies, banks, enterprises, etc. They can work as advocates, judges, notaries, investigators, prosecutors, *legal advisors*, inspectors, customs officers, traffic officers, and other workers of *law enforcement agencies*.

Legal profession combines legal practitioners and scholars, members of the *judiciary*, and *the Bar*, *prosecutors*, *defense lawyers*, *notaries*, jurists and *counsels* (legal advisors of private, public, state and municipal enterprises, establishments and organizations) etc.

The Academy of Legal Sciences was established in 1993. It is a national scientific organization, which carries out the fundamental researches and coordinates, organizes and fulfils works in the field of state and law. The academicians and known scientists are the members of the Academy. There are also some other professional unions of lawyers in Ukraine.

The Union of Lawyers of Ukraine carries out lawmaking, scientific, methodological, educational and informative activities with the aim of promoting lawyers of Ukraine in their professional and social interests, their public activities and participation in the state policy development.

The Ukrainian Bar Association unites lawyers from all spheres of legal profession with the aim of protecting their professional and other common interests, developing the legal profession, and creating a law-governed state in Ukraine.

The Union of Advocates of Ukraine is an independent and self-governed public all-Ukrainian organization. It is aimed at facilitating the role and authority of the Bar in our society and the state, the true independence and self-regulation of the Bar and developing the democratic state in Ukraine.

The Ukrainian Association of Prosecutors has a purpose to protect legal rights and interests of its members who

worked/work in the Prosecutor's Office, and support the prosecutors' positive image in Ukraine and abroad, helping to fulfill their tasks.

The Ukrainian Notarial Chamber is a public organization which supports its members in their professional activities, makes efforts to improve notary system and participates in the law-making process.

The Ukrainian branch of the European Law Students' Association – ELSA Ukraine is comprised of students and recent graduates of the Ukrainian law education establishments who are interested in law and have demonstrated commitment to international issues.

CIVIL OFFENCES/TORTS

UNIT 7
PART 1

Civil offence – цивільне правопорушення

Tort – делікт, протиправна дія, вчинена однією особою проти іншої особи, її власності або репутації.

1. Answer the questions.

– What civil offences can you name?

– What types of torts can you name?

– What remedies is the injured person entitled to under the law?

Vocabulary

to inflict	damages
to injure	fraudulent misrepresentation
to restrain	liability/responsibility
to fail to do – smth/not to do smth	expected losses
failure	defective products
damage	–

2. Read and translate the text.

What Is a Tort?

Generally speaking, a «tort» is an injury one person or entity inflicts (accidentally or intentionally) upon another. When one person commits a tort upon another, the injured person is entitled to remedies under the law. Generally, these remedies can include monetary compensation and restraining orders. The person who brings the lawsuit is called the «plaintiff», and the

person who is sued is called the «defendant». The area of tort law is often referred to as «personal injury» law. Most torts involve, in some part, the doctrine of «negligence».

The concept of negligence can generally be describes as (i) the failure of one person to act in a way we would expect that person to do under the circumstances and (ii) an injury which results from that failure. A tort is a civil wrong that can be remedied by awarding damages (other remedies may also be available). These civil wrongs result in harm to a person or property that forms the basis of a claim by the injured party. The harm can be physical, emotional or financial. Examples of torts include medical negligence, negligent damage to private property and negligent misstatements causing financial loss. There are many specific torts, such as trespass, assault and negligence.

Business torts include fraudulent misrepresentation, interference in contractual relations and unfair business practices. Torts fall into three general categories: intentional torts (e. g. unfair competition), negligent torts (e. g. causing an accident by failing to obey traffic rules) and strict liability torts (e. g. liability for making and selling defective products).Why some wrongs are dealt with by tort law (or the law of torts) and others considered criminal offences is the subject of some debate.

However, there are certainly overlaps between tort law and criminal law. For example, a defendant can be liable to compensate for assault and battery in tort and also be punished for the criminal law offence of assault. Differences between tort law and criminal law include: the parties involved (the state brings an action in crime, a private individual brings an action in tort); the standard of proof (higher in criminal law); and the outcomes (a criminal action may result in a conviction and punishment, whereas an action in tort may result in liability on the part of the defendant and damages awarded to the claimant).

The primary aims of tort law are to provide relief for the harm suffered and deter other potential tort feasors from committing the same harms. The injured person may sue for both an injunction to stop the tortious conduct and for monetary damages. Depending on the jurisdiction, the damages awarded will be either compensatory or punitive. Compensatory damages are intended to put the victim in the position he or she would have been in had the tort not occurred.

Punitive damages are awarded to punish a wrongdoer. As well as compensation for damage to property, damages may also 261 be awarded for: loss of earnings capacity, future expected losses, pain and suffering and reasonable medical expenses.

3. Match the English words and phrases from the text of Ukrainian equivalents.

A	B
1) battery; 2) defendant; 3) products liability; 4) to be sued; 5) automobile accident; 6) plaintiff; 7) malpractice; 8) negligence; 9) assault; 10) restraining order; 11) to be entitled to remedies;	a) делікт, цивільне правопорушення; b) зробити делікт; c) переслідувати по суду; d) завдати шкоди будь-кому; e) потерпілий; f) випадково; g) мати право на отримання; судового захисту; h) грошове відшкодування; i) заборонний судовий наказ; j) подати позов; k) позивач; l) відповідач, обвинувачений, підсудний; m) недбалість; n) дорожньо-транспортна пригода; o) відповідальність за приміщення;

12) premises liability 13) slander 14) to commit a tort upon smb; 15) fraud; 16) libel; 17) invasion of privacy; 18) fraudulent act; 19) to inflict an injury upon smb; 20) monetary compensation; 21) accidentally; 22) defamation; 23) to bring a lawsuit; 24) tort; 25) injured person; 26) intentionally	p) недобросовісна практика, лікування з порушенням закону; q) відповідальність виробника (перед споживачем за якість товару); r) дифамація; s) усний наклеп; t) наклеп письмовий або через друк; u) порушення недоторканності особистого життя; v) нанесення ударів, побоїв, побиття; w) обман, шахрайство; x) облудна, шахрайська дія; y) напад, словесна образа і загроза фізичним насильством; z) навмисно, умисно

4. Complete and translate sentences with the phrases from the exercise 3.

1. While a crime such as murder or shoplifting is a wrong committed against society, a tort is a _____ committed against an individual.

2. Torts are handled in the civil courts, where the _____ brings an action against the wrongdoer.

3. In most cases, the injured party is entitled to remedies under the law, such as _____.

4. In medical malpractice cases, the damages awarded to the injured party may include lost wages and _____.

5. The tort of _____ occurs when one of the parties to a contract makes a false statement about a fact and knows it is not true, and this fact is acted upon.

6. When a person stops parties from entering into a contract, for example, this person is said to interfere in _____.

5. Make the following combinations of nouns and adjectives

1) civil;	a) damages;
2) contractual;	b) wrong;
3) injured;	c) misrepresentation;
4) fraudulent;	d) party;
5) medical;	e) relations;
6) monetary	f) expenses

❖ *TASKS FOR INDEPENDENT WORK*

1. Make sentences using the following phrases.

– to commit a tort upon smb.;
– to do under the circumstances;
– to result from, to result in;
– to fall into, to deal with;
– to sue for, to deter from;
– to be awarded for, t;
– be remedied by.

2. Answer the questions.

– According to the text, what are the two main objectives of Tort law?

– An injured party can sue for damages or for an injunction. According to the text, what types of loss can be compensated by an award for damages?

– What does the term «injunction» mean?

– A manufacturer produces a dangerous toy train. What category of tort is this?

CIVIL OFFENCES / TORTS

UNIT 8
PART 2

1. Read the text. Review the following torts and determine which of the descriptions in the text they correspond to.

– Malpractice;
– Assault and battery;
– Products liability;
– Fraud;
– Premises liability;
– Automobile accidents;
– Defamation/invasion of privacy.

Assault and Battery. Fraud

There are a number of different types of torts. Here is a short list of the most common.

1. These types of torts involve all of the personal injuries one can receive in an automobile accident. Generally, one driver causes an accident which injures (or sometimes kills) others (e. g. his passengers, people in another automobile or pedestrians).

2. These types of torts involve injuries one can receive from the condition of a particular parcel of property, mostly due to the failure of the property owner to keep the condition of the property in a safe 263 condition. Two common examples of these types of torts include (i) a «slip and fall» accident and (ii) an injury one receives from a crime committed on another's property (e.g. being mugged or assaulted in a private parking garage where the owner of the garage knew that people were

getting mugged all the time – and did nothing to prevent further muggings).

3. These types of torts involve injuries one can receive due to the mistake of a licensed professional (i.e. a doctor, a lawyer or a dentist). Generally, these types of torts require the «expert» testimony of a professional (e.g. another doctor in a medical malpractice case).

4. These types of torts involve injuries one can receive from a «product» such as a machine, medical device or a prescription drug. The injured person must prove that the product in question was improperly designed, constructed or packaged without the proper regard for the damage it could cause to a human being.

5. These types of torts involve injuries one can receive from something another says or writes which is untrue, malicious and/or private. These defamation torts include (i) slander (spoken word), (ii) libel (written word) and (iii) invasion of privacy (making something public which was and should have remained very private).

6. These types of torts generally involve one person physically attacking another person. These are also sometimes called «intentional torts» to distinguish them from most other torts (which usually involve an accident resulting from another's mistake or lack of care).

7. This is also another type of intentional tort. This involves one person lying, misrepresenting or concealing an important piece of information from another person in order to get that other person to do or refrain from doing something. In short, a plaintiff is tricked by the fraudulent act of the defendant.

2. Answer the questions.

– What are the types of torts?

– How do you understand the «slip and fall» type of accident?

– People of what professions can be accused of malpractice?

– What is the difference between slander and libel?

– How do intentional torts differ from most other torts?

– What type of tort does misrepresenting or concealing information belong to?

– What type of tort does physically attacking a person belong to?

3. Read the text and answer the questions.

– What is the main difference between assault and battery?

– What are the most common punishments imposed for assault, battery and fraud?

ASSAULT AND BATTERY

Assault is a threat against a person, and battery is a physical attack. For example, a person who waves a fist in front of another person and threatens to beat that person is guilty of assault; a person who strikes another person with a fist is guilty of battery.

The victim can sue the assailant for damages, and the state may also prosecute for misdemeanor. In a civil case alleging assault, the victim must prove that he or she was in imminent danger of injury or had reason to think so. Abusive language alone does not constitute an assault. Threatening with a pistol may be an assault, even if the weapon is unloaded. In a case of battery the amount of contact is unimportant, for any touching of another person in an angry, vengeful, rude, or insolent manner constitutes a battery.

FRAUD

Fraud is an intentional untruth or a dishonest scheme used to take deliberate and unfair advantage of another person or group of persons. It includes any means, such as surprise, trickery, or cunning, by which one cheats another. Courts have distinguished two types of fraud, actual fraud and constructive fraud. Actual fraud is intentional criminal deception for the purpose of inducing another to part with something of value, to acquire something of less than apparent value, or to surrender a legal right.

Schemes specifically intended to cheat someone, such as selling shares in nonexistent plots of land, are actual frauds. Constructive frauds are words, acts, or omissions that tend to mislead or deceive someone or violate a confidence but that are not necessarily of malicious intent. Selling a house while forgetting to mention a chronically malfunctioning heating system is an example of constructive fraud.

Usually, the victim of fraud may sue the wrongdoer and recover the amount of damages caused by the fraud or deceit. But the victim must be able to prove damages.

4. Read and translate the text.

Malpractice

Malpractice refers to misconduct or negligence by a professional person, such as a physician, lawyer, or accountant. Such misconduct includes failure to exercise the level of skill and learning expected of a licensed professional. The result of malpractice to the client or patient is injury, damage, or some loss owing to professional incompetence. The official criteria for a valid medical malpractice claim are duty, breach, damages, and causation. The practitioner must have had a relationship to the patient, which indicates that he or she had a duty to exercise ordinary care; must have breached that duty, according to the

applicable standard of care; and because of that breach must have caused the patient physical and monetary damages.

If there is evidence of malpractice, a client may sue in a civil action, seeking damages in the form of money. Those most likely to be sued are surgeons, since malpractice is much easier to prove when a surgical operation has been done. If, for example, a surgeon leaves a foreign object inside a closed wound, the surgeon is clearly liable for the carelessness. Plastic surgeons are most at risk, since their operations are done to improve the patient's appearance. Dissatisfied patients may sue.

Medical malpractice actions do three things: provide quality control for the medical profession; provide some measure of compensation for the harm done; and give emotional vindication to the plaintiff, which is a measure of his or her ability to make a complaint and receive a satisfactory response. Of these, quality control is probably best achieved. Since the 1970s there has been a virtual epidemic of malpractice suits in American courts. The bringing of abortion malpractice suits has even been employed by both prochoice and antiabortion plaintiffs. Wrongful birth action is a medical malpractice claim by parents for the birth of a severely disabled child.

Some antiabortion groups encourage abortion malpractice claims, one type of which is for emotional harm they term «post-abortion trauma». Other professionals, including clergy, teachers, stockbrokers, architects, and dentists, have been sued for malpractice. Because judgments against a professional may result in very high damages, often of more than 1 million dollars, individuals in the professions carry liability insurance. Premiums for malpractice insurance have risen dramatically, costing thousands of dollars a year. Some state legislatures have taken action to limit the number of suits and the amount of the damages.

5. Find the English equivalents of the following phrases in the text.

- неправомірна поведінка;
- недобросовісна лікарська практика;
- доказ недобросовісної практики;
- порушувати обов'язки;
- грошова компенсація;
- стягнення, відновлення права, віндікція;
- моральна шкода;
- судове рішення, вирок щодо кого-небудь;
- страхування відповідальності.

6. Translate into Ukrainian.

- active negligence;
- crime of negligence;
- criminal negligence;
- gross negligence;
- imputed negligence;
- infliction by negligence;
- killer by negligence;
- passive negligence.

7. Answer the questions.

- What does malpractice refer to?
- What is usually the result of malpractice?
- What does each of the official criteria for a medical malpractice claim (duty, breach, damages, and causation) mean?
- Why are surgeons most likely to be sued for malpractice?

❖ ***TASKS FOR INDEPENDENT WORK***

1. Watch the video Lawyers on the Line – How Does a Civil Trial Go?
LINK: https://www.youtube.com/watch?v=BsJu-lgGYBg

2. Write down a summary.

REMEDIES IN THE CIVIL COURT OF LAW

UNIT 9

1. Read the text and replace the highlighted words and phrases with the English below.

injunctive relief, compensatory damages, defendant's actions, lost income, to recover, bad faith, malice, punitive damages, temporary restraining orders, plaintiff

Types of Damages

In most tort cases, the (позивач) is seeking damages (i.e. money). Generally speaking, there are two major categories of damages a plaintiff can (стягнути збитки) in a personal injury case: (i) (компенсаторні збитки) and (ii) punitive damages.

«Compensatory damages» are designed to «compensate» the plaintiff for what the plaintiff has lost or endured (e.g. medical bills, lost wages, (втрачена вигода), physical pain and suffering and mental / emotional pain and suffering) as the result of the (дій відповідача).

(Грошове відшкодування у вигляді покарання відповідача) are designed to punish the defendant for his actions. However, punitive damages are only awarded in extraordinary situations where the plaintiff proved that the defendant acted with (злий намір) or intent – negligence is not enough. The law permits punitive damages in order to discourage similar acts in the future by the same defendant or other persons. Punitive damages are usually awarded in cases involving fraud, (несумлінність) or intentional acts.

Some tort cases also seek what the law calls (судову заборону). Injunctive relief involves a court order requiring or preventing the defendant from doing or continuing to do a certain act. This type of relief includes such things as

(тимчасова судова заборона) and permanent injunctions. A plaintiff can request both injunctive relief as well as monetary damages in the same lawsuit.

2. Answer the questions.

– What are two major categories of damages a plaintiff can recover in a personal injury case?

– What category do medical bills, lost wages, or lost income belong to?

– What is the purpose of punitive damages?

– In what situations or cases are punitive damages awarded?

– What is injunctive relief?

3. Read the text and determine if these statements match the content of the text. Correct the false statements.

– The claimant bought sandwiches at a drive-through McDonald's.

– She didn't have to have medical treatment for 2 years.

– McDonald's wanted to give her $800.

– Liebeck and her lawyer tried a few more times to reach a settlement.

– Liebeck filed a suit for active McDonald's negligence.

– The evidence didn't show that McDonald's did actually serve their coffee much too hot.

– The court found McDonald's knew their coffee was injuring people.

The Most Famous Frivolous Lawsuit:
Liebeck Against McDonald's

The claimant, a 79-year-old woman, bought coffee at a drive-through McDonald's and got really bad third-degree burns when she opened the container. She had to have medical

treatment for two years. 267 Actually, at first she only tried to get $20,000 to pay her medical expenses. But McDonald's only wanted to give her $800. Then Liebeck and her lawyer tried a few more times to reach a settlement before the case went to trial, but McDonald's always refused. Probably because in other cases the courts had decided that coffee burns were an open and obvious danger, and McDonald's thought Liebeck couldn't win.

Liebeck filed a suit for gross negligence, saying that McDonald's sold coffee that was defectively manufactured. The evidence showed that McDonald's did actually serve their coffee much too hot. In fact, more than 700 people had been burnt in the years from 1982 to 1992 by McDonald's coffee. The court found they knew their coffee was injuring people. The jury found for the claimant. They said that McDonald's was 80 % responsible and Liebeck was 20 % responsible. They said the warning on the coffee cup was too small and not sufficient.

At first Liebeck was awarded $200,000 in compensatory damages, which was then reduced by 20 % to $160,000. They also awarded her $2,7 million in punitive damages. The idea was that McDonald's should pay her two days worth of coffee revenues, which were about $1.35 million per day. The judge then reduced the punitive damages to $480,000. So the total amount of damages was $640,000. The decision was later appealed by McDonald's and Liebeck, but they settled out of court for an amount less than $600,000. Nobody actually knows how much she got, as a matter of fact.

❖ *TASKS FOR INDEPENDENT WORK*

1. Read and translate the text.

Appeals and PostConviction Remedies

The appeal of criminal conviction in US jurisdictions must be requested by the convicted defendant (now an offender) and granted at the discretion of the higher court. Exceptions include the military system of justice, which provides for automatic appeals. Appeals by the defendant must be instituted within a specified time after convicF tion, although for good cause appellate courts in some jurisdictions may extend this period. Generally there are two classes of appellate review sought by deF fendants. The first involves appeal of conviction by trial, including appeal of denial of pretrial motions to suppress certain evidence. UsuF ally appeals of guilty plea convictions are not permitted because a guilty plea waives this right. The second class involves challenge of the conditions of custody; this follows conviction and is referred to as postFconviction relief. Appeals of convictions proceed in various ways, with a few jurisdictions requiring approval by the trial court first. But more commonly they proceed by a writ of error (requiring the appelF late court to review the trial court or to arrest record for errors) or other writs submitted to the appropriate appellate court. Appeal of custody is commonly initiated by a writ of habeas corpus (literally «you have the body», that is, the person in custody who must be preF sented to the court). The appellate process may ultimately involve the entire range of state and federal courts, eventually reaching the U.S. Supreme Court. Currently, before appeals move from state to federal review, state remF edies must be exhausted. Appeals and other postconviction remedies are usually decided on the basis of relevant records and briefs, including written presenF tations of arguments. Frequently appellate arguments are presented orally

before the appellate court by counsel with the petitioner not physically present. This is an expensive process, beyond the means of most petitioners. However, a series of U.S. Supreme Court cases has substantially expanded the right of poor petitioners to obtain court transcripts and the assistance of counsel at state expense, at least on first appeal. In effect, under these decisions, if the state allows an apF peal, then an indigent defendant has the right to free counsel for this purpose and the transcripts are provided without cost. In addition, public defenders frequently pursue appeals available to their clients as well. Some states also allow appeals by prosecution, under certain reF stricted conditions. The state cannot appeal a trial court finding of not guilty, because the defendant is protected from retrial by ConstitutionF al prohibitions against double jeopardy. But a few states allow rather broad but «moot» prosecution appeals. These have the possible effect of settling a legal controversy raised by the case, but no consequencF es for the individual defendant. Usually such appeals deal with (1) dismissal charges, indictments, information; (2) uppression of eviF dence before trial including confessions, admissions, and evidence obtained by search and seizure; (3) an award of a new trial by the court; (4) an illegal sentence; or (5) discharge of the defendant on speedy trial grounds.

2. Find the answers in the text above:

– Who must request the appeal of criminal conviction?

– What are the exceptions of granting an appeal to an offender?

– What are the two classes of appellate review sought by a defenF dant?

– In what cases do appeals move from state to federal courts? 5. On what basis are appeals and other postconviction remedies usuF ally decided?

– What right has an indigent defendant? Appeals and Post Conviction Remedies 158 159?

– Under what conditions do some states allow prosecution appeals?

– What does the 5th Amendment to the US Constitution prohibit?

– What do prosecution appeals often deal with?

3. Say whether these statements are true or false:

– The appellate process involves only state courts.

– Appeals of guilty plea convictions are not usually permitted. 3. Appellate courts in some jurisdictions may extend the specific period of time passed after conviction.

– Court transcripts are always provided without cost.

– Oral presentations of arguments are briefs.

– The appeals of criminal conviction must be requested by a highF er court.

– The appellate process may eventually reach the U.S. Supreme Court.

TORT LAW

UNIT 10
PART 1

1. Give the translation of the word expressions and memorize them.

1) основні розділи	7) установлений законом обов'язок	13) накладати (ставити за) обов'язок
2) делікт	8) тілесне ушкодження, майнова шкода або обмеження прав заявника	14) важливе право або інтерес
3) цивільне правопорушення	9) безпосередня причина	15) порушення без спричинення шкоди
4) кримінальна карана шкода суспільству	10) обсяг цих обов'язків	16) слугувати підставою (виправданням) для
5) шкода, яку можна компенсувати	11) зважаючи на необхідність забезпечення безпеки інших осіб	17) визначення розмірів відшкодувань і їхнього стягнення
6) становити делікт	12) порушення	18) істотний чинник
–	–	19) спричинення настання події

2. Read and translate the text.

Tort law is one of the major divisions (1) of the law. A «tort» (2) is a civil wrong (3) as distinguished from crime. A crime is a public wrong (4). What is a Tort? A tort is the breach of a legal duty which causes some kind of compensable injury (5) or loss to person, property, or rights. Requirements for a Tort. In general, four elements must coincide for an act to constitute a tort (6) on which a lawsuit can be based.

These elements are: (1) a legal duty (7) owed by one person to another; (2) violation of the duty; (3) injury or loss to the plaintiff (8); (4) the violation of the duty is the proximate cause (9) of the injury or loss.

The first requirement for a tort is the presence of a legal duty owed by one person to another. The nature and scope of these duties (10) are defined mainly by case law. An example of a duty which is important in many lawsuits is the broad rule that a person must act with reasonable regard for the safety of others (11).

The second requirement for a tort is a breach (12) of the legal duty. Normally, the issue of whether a legal duty exists is a question of law, and the issue of whether the duty has been violated is a question of fact. The judge decides whether the law imposes a duty (13), but the jury decides whether or not the defendant breached the duty.

The third requirement for a tort is injury or loss suffered by the plaintiff. The injury or loss may be a physical injury, injury to property, or injury to (or loss of) a valuable right or interest (14). In the absence of injury or loss, violation of a legal duty is a «wrong without harm» (15) or «damnum absque injuria». Moreover, the injury or loss must be significant enough to warrant (16) the court's time in providing and enforcing a remedy (17).

The fourth requirement for a tort is that the defendant's breach of duty is a proximate cause of injury or loss to the

plaintiff. Legally, an act is a proximate cause of an event if the act is a substantial factor (18) in bringing about the event (19).

3. Match the phrases in column A with their equivalents in column B.

1. The first requirement for a tort is the presence of a legal duty owed by one person to another. The nature and scope of these duties are defined mainly by case law	A. Делікт – це порушення встановленого законом обов'язку, наслідком якого є тілесне ушкодження, майнова шкода або обмеження прав особи, які можна компенсувати
2. The injury or loss may be a physical injury, injury to property, or injury to (or loss of) a valuable right or interest	B. Крім того, ушкодження або збитки повинні бути достатньо вагомими, аби виправдати витрачання часу та зусиль суду на визначення розміру відшкодувань і їхнє стягнення
3. A tort is the breach of a legal duty which causes some kind of compensable injury or loss to person, property, or rights	C. Делікт є цивільним правопорушенням, на відміну від злочину. Злочин – це кримінально карана шкода суспільству
4. The judge decides whether the law imposes a duty, but the jury decides whether or not the defendant breached the duty	D. Ушкодження або збитки можуть бути фізичними, або стосуватися майна чи обмеження (або втрати) важливих прав або інтересів
5. Moreover, the injury or loss must be	E. Першою вимогою для кваліфікації делікту

significant enough to warrant the court's time and trouble in providing and enforcing a remedy	є наявність установленого законом обов'язку однієї особи щодо іншої. Характер та обсяг цих обов'язків переважно встановлюються прецедентним правом
6. A «tort» is a civil wrong, as distinguished from crime. A crime is a public wrong	F. Суддя вирішує, чи накладає закон певний обов'язок, але питання порушення такого обов'язку обвинуваченим вирішують присяжні

4. Translate into Ukrainian.

– regard for the safety of others;
– jury decides whether or not the defendant breached the duty;
– public wrong;
– some kind of compensable injury;
– wrong without harm;
– proximate cause of the injury or loss;
– legal duty owed by one person to another;
– act is a substantial factor in bringing about the event;
– tort law;
– four elements must coincide;
– injury or loss must be significant enough;
– physical injury, injury to property;
– violation of the duty;
– civil wrong;
– nature and scope of these duties;
– broad rule;
– valuable right or interest;
– major divisions of the law;

– issue of whether the duty has been violated is question of fact.

5. Translate into English.

– фізичні ушкодження або майнова шкода;
– кримінально карана шкода суспільству;
– порушення без спричинення шкоди;
– враховувати необхідність убезпечення інших;
– загальне правило;
– установлений законом обов'язок однієї особи стосовно іншої;
– шкода, яку можна компенсувати;
– один з основних розділів права;
– на підставі якого можна розпочати судовий процес;
– істотний чинник;
– збитки повинні бути достатньо вагомими;
– порушення встановленого законом обов'язку;
– безпосередня причина;
– ушкодження або збитки, спричинені заявнику;
– характер та обсяг цих обов'язків.

❖ *TASKS FOR INDEPENDENT WORK*

1. Translate the sentences into English.

– Більшість справ, що належать до деліктного права, ґрунтуються на недбалості, а найбільша кількість випадків недбалих дій спостерігається в разі дорожньо-транспортних пригод.

– Звичайно, недбалість доводиться фактами, що свідчать про те, що: (1) за законом, підсудний був зобов'язаний виявити належну обережність щодо заявника та (2) підсудний не виявив належного ступеня обережності.

– Поведінка людей дуже похилого віку та дуже молодих людей оцінюється з погляду того, що розумно

було б очікувати від людей подібного віку розумового розвитку, здібностей і життєвого досвіду.

– Поведінка людей у надзвичайних ситуаціях оцінюють із погляду того, що було б розумним очікувати від інших людей у подібних умовах.

– «Недбалість» – це поведінка, що виходить за межі вимог, установлених загальним правом для захисту інших від безпідставного ризику.

– Наклеп – це неправдива або принизлива заява щодо іншої особи. Це може бути пасквіль (у письмовій формі) або обмова (в усній формі).

– Звичайні зловмисні плітки можуть бути достатньою підставою для порушення клопотання про юридичну відповідальність за письмовий або усний наклеп.

– Якщо будь-яка особа намагається вдарити іншу особу, – це напад, незалежно від того, чи вдарила вона її, чи ні.

– Прикладами є публікація імені, фотографії особи, інформації щодо її приватного життя або використання її особистості з комерційною метою.

– Делікти цієї категорії містять, наприклад, напад, побиття, незаконний арешт і незаконне позбавлення волі.

– Незаконний арешт і незаконне позбавлення волі є майже тотожними діяннями. В обох випадках наявне незаконне затримання заявника, яке, як усвідомлює або має усвідомлювати відповідач, є незаконним.

2. Watch the video *Tort Law: The Detriments of Arbitration.*

LINK: https://www.youtube.com/watch?v=kMJVsFFpLOw.

3. Write down word by word and give the translation.

TORT LAW

UNIT 11
PART 2

1. Translate into Ukrainian.

– reasonably prudent person;

➢ conduct which falls short of a standard established by the common law;

➢ exercise due care;

➢ intelligence;

– things which speak for themselves;

– traffic accidents;

– measure the defendant's conduct;

– conduct of persons acting in emergencies;

– persons having special skills or knowledge;

– thing causing the injury was entirely under the defendant's control;

– capacity;

– negligence cannot be proved by ordinary means;

– protect others from unreasonable risks;

– hypothetical;

– conduct of the very old and the very young;

– failure to exercise the degree of care required;

– community standard of reasonable behavior;

– due care.

2. Translate into English.

– розумовий розвиток;

– люди, які мають особливі вміння або знання;

– поведінка людей у надзвичайних ситуаціях;

– дорожньо-транспортні пригоди;

– недбалість можна довести за допомогою правила res ipso loquitur,

– присяжні мають оцінити поведінку підсудного;

– належна обережність;

– оцінювати з погляду того, що було б розумним очікувати від інших людей у подібних умовах;

– речі, що говорять самі за себе;

– поведінка, що виходить за межі вимог, установлених загальним правом;

– буквально означає;

– причину шкоди повністю контролював підсудний;

– недбалість доводиться фактами, що свідчать про те, що;

– пояснюватися лише недбалістю.

3. Match the phrases in column A with their equivalents in column B.

1. False arrest and false imprisonment are essentially the same. Both involve an unlawful detention of the plaintiff which the defendant knows, or should know, is unlawful	A. Наклеп – це неправдива або принизлива заява щодо іншої особи. Це може бути пасквіль (у письмовій формі) або обмова (в усній формі)
2. Examples include publishing her name, picture, or private information about her, or using her personality for commercial purposes	B. Звичайні зловмисні плітки можуть бути достатньою підставою для порушення клопотання про юридичну відповідальність за письмовий або усний наклеп
3. Defamation is a false or derogatory statement about another. It may be libel	C. Якщо будь-яка особа намагається вдарити іншу особу – це напад,

(which is written) or slander (which is spoken).	незалежно від того, чи вдарила вона її, чи ні
4. Torts in this category include, for example: assault, battery, false arrest and false imprisonment	D. Прикладами є публікація імені, фотографії особи, інформації щодо її приватного життя або використання її особистості з комерційною метою
5. Common, malicious gossip may be sufficiently defamatory to justify liability for slander or libel.	E. Делікти цієї категорії містять, наприклад, напад, побиття, незаконний арешт і незаконне позбавлення волі
6. If a person tries to hit another person, it is an assault whether or not he hits the other person.	F. Незаконний арешт і незаконне позбавлення волі є майже тотожними діяннями. В обох випадках наявне незаконне затримання заявника, яке, як усвідомлює або має усвідомлювати відповідач, є незаконним

4. Translate into Ukrainian.

- false arrest and false imprisonment;
- derogatory statement about another;
- for commercial purposes;
- financial status;
- involve an unlawful detention;
- slander (which is spoken);
- malicious gossip;

– may be enough to give rise to a cause of action;
– battery;
– actual physical violence;
– defamation;
– morals;
– outrageous;
– publishing her name, picture, or private information about her;
– libel (which is written);
– assault;
– intrusion upon privacy;
– business practices.

5. Translate into English.

– неправдива або принизлива заява про іншу особу;
– використання його особистості з комерційною метою;
– напад;
– умисне втручання;
– побиття;
– незаконний арешт і незаконне позбавлення волі;
– фактичне фізичне насильство;
– незаконне затримання заявника;
– обмова;
– неприпустимий;
– шкода репутації;
– зловмисні плітки;
– публікація фотографії особи, інформації щодо її особистого життя;
– погроза насильством;
– наклеп;
– пасквіль;

– методи ведення підприємницької діяльності;
– комерційна мета.

❖ ***TASKS FOR INDEPENDENT WORK***

MAKE A GLOSSARY ACCORDING UNITS

TEXTS FOR WRITTEN TRANSLATION

TEXT 1
Division of law into public and private

Since the Roman times, division of right into ***public law*** (jus publicum) and ***private law*** (jus privatum) is generally accepted. For the first time, such division was proposed by Ulpian in the Digests of Justinian. According to him, private law was intended for regulation and protection of the sphere of ***person's private interests*** based on the principles of legal equality which is provided by inviolability of their private property, freedom of agreement, legal protection of their rights and interests of others. Public law, in its turn, was directed to regulation of the sphere of ***state and public interests*** through a range of imperative (mandatory) rules of conduct.

But over time, in connection with a significant complication of social relations, such classifying feature as the sphere of protected interests was not enough. That is why along with this criterion, the manner and nature of impact of law on relationships were also taken into consideration. I.e. when relationships are directed to secure state and public interests and ***subordination*** (vertical subordination), ***organizational-administrative*** and ***enforcement*** principles are inherent for them, they have public law nature. Instead, social relations, which not only directed to secure private interests and arise between legally equal entities, but also those which are

formed ***at their initiative*** and on the basis of ***purview*** in choice of behavior, i.e. through ***coordination***, have private law nature.

Starting to study civil law, first of all, we need to determine correlation of this branch with such categories as «private law» and «public law», since it affects choice of models, according to which the fields of national legislation are formed, codes are created, their content, character of relationships is determined, etc.

The traditional private law is characterized by the «private law – public law» dichotomy.

This approach is completely logical. But here we should consider undesirability of simplifications in establishing differences between private and public law. Most often such simplifications are linked to identification of law and legislation. As a result, we can often find expressions the essence of which boils down to the fact that as each law is a public phenomenon, private law exists only within the framework of public law.

However, we cannot identify the categories «law» and «act». The notion «law» is wider. It covers all obligatory norms that exist in society (including those based on the prescriptions of natural law, corporate norms, etc.) and cannot be reduced only to a set of regulations issued by the authorities. That is why one or other branch of law does not automatically become a public law from settlement of relations by legislative acts.

We should also take into consideration that while determining private and public law, we cannot be limited by quoting of Ulpian's words: «... public law is what concerns provisions of the Roman state, private – what concerns benefit of individuals». This mechanical citing distorts Ulpian's position, who did not write about distribution of the Roman law into fields, but that study of the Roman law is divided into two parts: public and private law (D.1.1.1.2). Therefore, he gave the

definition of these parts in a simplified form, based primarily on educational purposes.

Taking into consideration the above mentioned about peculiarities of interpretation of the notion of private law, we can conclude that the characteristic features of private law are:

1) recognition of priority of interests of a private individual as to interests of the state and other social and public formations;

2) recognition of «sovereignty of a private individual», i.e. non-subordination to other persons in private relations;

3) lack of power relations between subjects of private law: they are private individuals, none of which acts on behalf of the state or its bodies (not a figurant of the state);

4) legal equality of participants of private relations before the law (but not necessarily before each other);

5) initiative of the parties in establishing relationships;

6) free choice of subjects of civil law in choosing rules of conduct, not expressly prohibited by law;

7) providing of benefits to ordinary proceeding of protecting the interests of private individuals in court;

8) implementation of «rights, freedoms» of personality based on the norms of natural law through appropriate legal institutions.

Taking into consideration the above mentioned, **private law** can be defined as a set of ideas, principles, rules and regulations that determine the status and protect the interests of private individuals who are not figurants of the state and not in relations of power – subordination to each other.

Recently, lawyers (in particular, specialists in the field of administrative law) emphasize that when characterizing **public law**, it is not enough to specify only what concerns interests of the state in general, but one should also note that the following is inherent to public law:

1) official recognition of predominance of public (social) interests over interests of certain individuals;

2) presence of relations of power between its subjects – subordination;

3) clear definition of boundaries of possible behavior of subjects of public law by legislation acts adopted by relevant government authorities;

4) use of such method of legal influence as a direct «commitment», when participants of specific legal relations are suggested to act in a certain way;

5) use of prohibitions on certain actions as a means of formation of behavior of subjects of public law;

6) use of such incentive, first of all, as state coercion to ensure proper conduct by a subject of public legal relations;

7) acting of public law as prerequisites for public order and results of its implementation;

8) one of participants of public relations is necessarily the state or the person which represents it (figurant of the state).

Taking into consideration the above, **public law** is a set of legal rules and institutions that make up the functional-structural system, which regulates relations with the state (its figurants) and between subjects that are in relations of power and subordination to each other to ensure public order and protecting of interests of citizens (O. I. Kharitonova).

Public law together with private law creates a general system of law that is a part of civilization (culture).

TEXT 2
Correlation of private and civil law

The basis of private law is ***civil law*** that most fully absorbed all its features and is the foundation of all private law of Ukraine. Further, we shall review it in terms of four main directions:

1) as a field of law;

2) as a branch of legislation;
3) as a science;
4) as a subject.

But despite importance of civil law, we should recognize that in one way or another, signs of private law regulation are characteristic also to other branches of law, which in their totality form ***Ukrainian private law***. ***Family law, international private law*** and partly ***land law, environmental law and labor law*** must be referred to these areas of law. Today significant discussions arise regarding the place and role of ***economic law*** in the system of private law of Ukraine. However, economic law is not only a remnant of the legal system of Ukraine, which tried to synthetically combine organically inconsistent and contradictory private law and public-legal principles, but also a significant obstacle towards development of civil society and market economy. Indeed, in Ukraine there were no preconditions for introduction of dualism (duality) in the system of private law, and such artificial splitting and internal competition can negatively reflect on the unity and uniformity of application of private law norms when applying legal rules.

TEXT 3
Importance of the Roman law for formation of the civil law of Ukraine

Modern jurisprudence has its lineage back to ancient Rome, since the Roman law was formed and became an important factor for development of ancient culture, while being its essential part. Although legal norms governing civil relationships existed in more ancient civilizations and development of the Roman law was influenced by ancient Greek, ancient Egyptian, Jewish law, from which significant number of ideas, principles, specific legal rules were taken, but only in the Rome ancient civilization, law become a relatively independent phenomenon, has gained importance of

phenomenon that can be studied now, abstracting from the concrete historical conditions, culture, state in which it was formed.

Roman lawyers were first to create a special clear terminology, the same that is used almost by the entire world now, developed legal categories and notions, founded and developed a methodology of legal thinking, led to thinness of expression of these concepts. Finally, Roman lawyers were inspired in their search for those ancient ideals of justice, which are the same, as they meet eternal expectations of the human spirit and are now coming back into legal circulation as determinative frameworks of the modern legal system of Ukraine.

Touching on the importance of the Roman private law for modern civil law of Ukraine, we should emphasize civilization, historical and legal importance of the Roman law.

Civilization importance of the Roman law is that being an important part of the European civilization, it became in fact, as vividly described by some culture experts (V. Skurativsky), one of cornerstones of the so-called «European house».

With time, many maxims of Roman lawyers not only did not lose their legal meaning, but also became «winged expressions», transformed into legal (and not just legal) presumptions (provisions that do not require proof). For example, pater est quem nuptiae demonstr?nt – the one who is married to the child's mother is considered to be the child's father. The following aphorisms gained the same value: dominus sentii periculum – the risk of accidental death (things) is always born by the owner; prior tempore – potior jure – first in time – stronger by right; est in mora – delay (performance) entails the risk of accidental death (things); nemo debet bis puniri pr? uno delicto – nobody can be punished twice for the same offense. These and many other famous aphorisms of the

Roman lawyers entered the treasury of the world legal culture and became an acquisition of modern jurisprudence.

The historical value of Roman law for Europe, including Ukraine, is caused by the fact that over time it influenced formation and development of all European law systems in classical and Greek and Roman (Byzantine) variants.

After fall of the Roman Empire in 476, the Roman law continued to exist and even develop in the eastern part – the Eastern Roman Empire (Byzantine Empire). With its fall, the era of oblivion started for the Roman law. It seemed to have disappeared for a long time. It was not studied, a few records were lost. It seemed that the final death and loss were inevitable. However, the Roman law continued to live in the minds of the Romans conquered by barbarians and their descendants. It rules are gradually applied to regulate relations between the Roman population, and then studied.

The phenomenon of reception of the Roman law, which can be defined as its revival, perception of the spirit, core principles, regulations and separate regulations on the new stage of development of civilizations, began this way.

Since reception of the Roman private law is the notion which cannot be measured at once, it can occur in various forms and types.

In particular, reception is available in the following **forms**:

1) study of the Roman law at educational institutions as a juridical comprehensive discipline to form world outlook of future lawyers;

2) study of the Roman law as a heritage of culture;

3) research, analysis and comment on the Roman law sources;

4) direct application of rules and provisions of the Roman law;

5) use of norms of the Roman law as models for developing of normative acts (especially in codifications);

6) use of the Roman private law methods of developing of normative acts or practices in their implementation (application);

7) perception and use of the principles, ideas and categories of the Roman law.

Reception varies not only by form, but it may be of different types: **direct and indirect** (derived).

Cases of direct reception take place when a new civilization is matured enough to understand achievements of past culture, since extinction of which not too much time have passed for ideas, legal monuments, etc to be lost. Reception of the Roman law in Byzantium can be an example.

Often ideas of the Roman law, its certain provisions and legal decisions are received indirectly, for example, by borrowing ideas from the legal system of any country, which have already received the Roman law (proxy, derivative reception). An example may be borrowing by many countries of the Code of Napoleon or the German Civil Code, which in their turn are an indirect result of indirect reception – reception of the Roman law in Byzantium in the VI–X cent. was an indirect chain.

Reception can be not only **obvious but latent (hidden)**. This occurs, of course, in cases where borrowing of certain ideas or key decisions of the Roman law takes place in the process of lawmaking, but a fundamentally different deviation, rejection of «old» law, is declared here. We meet with this kind of reception, for example, while codifying civil law in the Soviet state, other countries, where socialist legal system existed or exists.

The Roman private law was received most widely. Such legal categories as «agreement», «commitment», «delict», «contract», «mortgage» and others are initiated by the Roman private law and treated (with relatively minor modifications) in

almost all countries unambiguously. It should be mentioned that their essence (as of many other traditional institutions of modern law) can be easier considered and understood, when we trace development of these concepts from their origins.

In particular, it also influenced development of Ukrainian law and continues to influence the concept of law in Ukraine today.

Legal significance of the Roman law is that the conceptual and categorical apparatus, terminology of modern law are based on the ideas, principles and definitions developed by the classical Roman jurisprudence.

TEXT 4

Notion of civil law of Ukraine as a branch of law

Civil law is a manifestation of private law at the level of national legal systems, acting here as a branch of national law.

The term «civil law» is used in scientific and academic literature and in legal practice in several senses:

1) a special kind of subjective right;
2) a branch of national law;
3) a system of legislation;
4) a part of science of law;
5) a subject.

Understanding of civil law as subjective law belonging to a particular private individual, and as a branch of law, that is a manifestation of private law at the level of national legal system is defining between them.

Civil law as the law that belongs to the subject of civil relations is a possibility of its determined behavior based on the norms of natural and positive law, protection of which is guaranteed by the state.

The characteristic features of civil law in this interpretation are that it:

1) belongs to the person who is a member of civil relations;

2) can be based both on legislative provisions and on the agreement of the parties, on customs, standards of morality, etc.;

3) is ensured by legal protection through public legal means (court, notary public, government agencies, etc.) regardless of the grounds of origin.

In the meaning of a branch of national law, civil law can be defined as a set of concepts, ideas and legal norms which set the status of a private individual and ensure protection of his interests on the principles of optionality, legal equality and initiatives of parties.

The characteristic features of civil law as a branch of national law is that it:

1) is a manifestation of private law at the national level;

2) is a set of concepts and legal ideas, principles embodied in acts of legislation and other norms;

3) serves to the purposes of ensuring of realization of subjective civil rights to their owners.

The main role in determination of civil law as a branch of law is played by its **subject, method, functions** and **principles.**

TEXT 5
Subject of civil law

Property relations; personal non-property relations associated with property ones; and other personal non-property relations were recognized as the subject of civil rights in the Soviet civil law. In particular, this approach was reflected in article 1 of CC of UkrSSR, 1963.

In this regard, in due time, in Soviet civil law literature, definition of the concept of property relations and establishing of the criteria for assigning them to areas of civil law in Soviet literature were paid much attention. Some authors named commodity-money nature of property relations, others named

property independence of subjects and the fact that the last act «independent owners of goods» as such criterion.

With adoption of the Civil Code of Ukraine in 2003, foundation for such disputes is liquidated as the Article 1 of the Civil Code refers to the subject of civil regulation only those of property relations that are based on legal equality, free will, property independence of their participants. Thus, not the subject but the method and principles of legal regulation become the main criterion for establishing branch belonging of relationships. Legal equality and free expression of participants of relations regulated by it are typical for the civil method.

By its nature, **property relations** are characterized by the following features:

1) they are economic, i.e. they have money-commodity character;

2) they arise and exist between the participants who possess proprietary independence and legal equality;

3) they provide satisfying of mostly material needs and interests.

The most common criterion of property relations in civil law can be divided into:

1) property relations at to belonging of property (***relations of statics***), such as relations of ownership, possession, use;

2) property relations as to fixing of the process of property transition (***relations of dynamics***), for example, relations under contractual obligations, commitments as to injury, etc.;

3) property relations on management of a corporation (***corporate relations***), for example, relations for management of private property by members of corporations (JSC, LLC, etc.);

4) property relations as to creation and use of intellectual property (***exclusive relations***), for example, relations on use of works of literature, science and art, inventions, utility models and industrial designs, etc.

Non-property relations also take a significant part in the subject of civil regulation. These legal relations as a subject of civil law are quite «young» since they are first officially recognized in that rank only in the CC of Ukraine. **Features of non-personal relationships are the following**:

1) they are closely related to personality of their participants;

2) they are non-property, that is their content cannot be determined in money or other property equivalent;

3) they arise and exist between legally equal participants;

4) they provide satisfaction of mainly internal (spiritual) needs and interests.

TEXT 6
Method of civil regulation of social relations

Method of civil regulation is a set of specific means of effect on participants in civil relations that are characterized by legal equality of parties, as well as provision to the latest an opportunity of solution of these relations at their discretion with the exceptions established by civil legislation.

As absence of categorical orders to participants of civil relations to act in a certain way (an exception is civilian security relationships – obligation to compensate a damage, to return the property obtained without grounds, etc.) is typical for the method of civil regulation in most cases, the latter is given an opportunity to select the type of behavior and independently regulate their relations.

This method is called dispositive method, unlike imperative method – characteristic for administrative law (public law in general).

Civil method of regulation of civil relations is a complex category, which has the following features:

1) ***legal equality of participants, their autonomy and independence***, which means that participants of relevant legal

relations have legally equal opportunities to acquire and exercise civil rights and create and perform civil duties, and they are not in any legal dependence between each other (authoritative subordination);

2) ***optionality in choice of behavior*** of members of civil relations, this means that parties can act initiatively, freely, in their own discretion, based on their own interests and purposes;

3) ***judicial dispute settlement***, which means that they are able to settle any disagreement between members of civil relationships in court;

4) ***property-compensational nature of measures of enforcement effect on the offender***, which means that the participant of legal relations that is not performing his duties violates the rights of other participants of civil relations or creates barrier as to their proper implementation, use of means of protection, not beneficial in terms of property for the offender, which are mainly of property character, which is directed to restoring of the violated right, legally protected interest or welfare of the victim party.

Thus, the method is a defining category, meaning that even if relations are proprietary by their content, but based on administrative or other authoritative subordination of one party to the other, for example, financial, tax, budget, etc, they are not related to the subject of civil regulation (Article 1 (2) of the CC of Ukraine).

Describing the civil method of legal regulation, however, we cannot ignore possibility of existence of imperative element in it (in liabilities arising from injury, imperative order is an order for compensation of such damage, grounds, conditions and procedure of their recovery).

TEXT 7
Principles of civil law

Principles of civil law are basic principles, the most general guidelines (principles) of civil law that have obligatory nature by virtue of their legal assignment. The meaning of civil law principles lies in the fact that they:

1) reflect essence of social orientation and major branch features of civil regulation, i.e. each further norm in its content must be penetrated by the principle of civil law;

2) are taken into account when concluding non-nominate contracts (Article 6 (1) of the Civil Code of Ukraine);

3) are taken into account when applying the analogy of law (Article 8 (2) of the Civil Code of Ukraine);

4) are taken into account when protecting the legally protected interest (Article 15 (2) of the Civil Code of Ukraine).

The following civil law principles are set in the Article 3 of the Civil Code of Ukraine:

1) ***inadmissibility of arbitrary interference in the sphere of private life of a person***, i.e. no one has the right to interfere into personal and family life of an individual without his consent, unless explicitly stipulated by the Constitution of Ukraine. This principle stipulates conditions for protection of privacy of an individual from undue external interference to ensure his internal (spiritual) interests;

2) ***unacceptable deprivation of property rights, except as prescribed by the Constitution of Ukraine and the law***, meaning that property right is inviolable in Ukraine. This principle provides a person with guarantee of economic independence and property separation from other participants of civil relations. However, in some cases directly prescribed by law, this principle may be subject to certain restrictions, when it is directly derived from the Constitution of Ukraine, such as depriving a person of property due to confiscation or forced

alienation of private property for reasons of social necessity (Article 41 of the Constitution of Ukraine);

3) ***freedom of contract***, this principle means that members of civil relations are free in possibility of entry into contractual relations and choice of the kind of contracts (both nominate and non-nominate), contractors and contractual terms, etc. In some, cases prescribed by law, this principle is subject to appropriate limitation, such as making previous or public contracts, etc. This principle provides a person with a possibility to initiatively enter into contractual relations at his own discretion, based on his own interests;

4) ***freedom of entrepreneurial activity that is not prohibited by law*** means that individuals are free to choose business. However, in some cases directly provided for by law, a person may be limited in his freedom of business, for example, under subject's content (deputies, officers and employees of state and local governments) or nature of business (establishment of monopoly), etc.;

5) ***judicial protection of civil rights and interests***, i.e. in case of violation of civil rights or interests, as well as in the case of creating obstacles as to their implementation, a person has the guaranteed opportunity to defend them in court. This person has the right to defend civil rights and interests both in courts of general jurisdiction and in specialized courts and arbitrations.

6) ***fairness, good conscience and reasonableness***, this principle means that regulation and protection of civil relations should take place fairly, honestly and wisely.

TEXT 8
Functions of civil regulation

The functions of civil law are main directions of its impact on civil relations in order to compile and implement the latter. Main functions of this branch of law traditionally include: ***regulatory, protective and educational functions***.

Sometimes this list looks a little different: regulatory, protective and preventive functions. Here it is meant that civil law generally performs functions inherent to law, but does it with its characteristic features.

This approach is essentially correct; however, in terms of possibility of overall assessment of functions of civil law, it can result in inadequate ideas of them, because it does not give a complete picture of the functional mechanism of this branch.

For these reasons, when characterizing features of civil law, it is appropriate to specify separately those functions that have general nature and those that are specific to this area.

While using this approach, we should distinguish:

1) general legal functions that appear at the level of civil law;

2) specific civilistic functions.

General legal functions that appear at the civil level are the following:

1. Information-directing function. The task of acquaintance of subjects of civil relations with the concept of rights of a human (individual), principles of determining of the position of a private individual, general trends of legal regulation in this area, etc. So, orientation of subjects of civil law for a certain type of behavior, awareness of their rights and obligations by them take place. In the event of failure to perform this function, members of civil relations almost lose the opportunity to feel themselves subjects of private law, and therefore cannot fully exercise their civil rights and obligations.

2. Educational (cautionary-educational, preventive) function. This would involve development of respect for law in general, civil rights of other persons, law enforcement, etc. Failure to perform this function by civil law can lead to abrasion of boundaries between a right and «not right», to violation of interests of other persons by subjects of civil relations, while exercising their civil rights.

3. Regulatory function. It consists in arrangement of civil relations, providing of rights and obligations to participants of these relations, establishing of rules of behavior of subjects of civil law.

4. Protective function. It performs tasks of protecting civil rights and interests from violations. This purpose is achieved by defining legal means of proper implementation of civil rights and obligations, establishment of measures of protection and responsibility for civil violations, etc.

Specific civilistic functions in the sphere of civil relations are as follows:

1. Authorizing function. Civil law creates a regulatory framework, prerequisites for self-regulation in the sphere of private law, determines the principles of internal control by agreement of parties of civil relations.

This function is a specific civilistic function, because only in this sphere, participants of relations may identify the rules of behavior, actually create normative acts of local action, etc.

The conceptual framework of this function is the maxim known to the Roman private law «Everything that is not explicitly prohibited by law is permitted», which was and is now opposed to the provision of public law «Only that is directly stated in the law is permitted».

2. Compensatory function. While exercising this function, possibility of resumption of the violated civil right and interest on the equivalent basis is ensured.

TEXT 9
System of civil law of Ukraine

The system of civil law as a branch must include:

1) ***civil provisions*** that are specific rules of behavior. The peculiarity of such rule of behavior is that the vast majority of civil norms has permissive nature, i.e. gives persons a choice of options of behavior. This significantly affects the structure of a

civil norm, as such its element as a sanction is either absent or is more universal than other branches of law;

2) ***civil institutions***, i.e. a group of civil rules governing homogeneous social relations. Thus, property rights institution, institution of delictual liability, etc. should be considered civil institutions;

3) ***civil sub-branch***, which is a set of institutions governing the homogeneous social relations, such as sub-branch of property law, contract law, etc.

The structure of civil law as a branch of law includes:

1) ***General part*** that contains civil norms extending the application on the whole range of civil relations and concern the sources of civil law, subjects, objects, contents and grounds of change and termination of civil relations, exercise of civil rights and their protection, etc.;

2) ***Special part*** that contains civil norms extending the application only on certain legal relations and concern regulation and protection of personal non-proprietary rights, proprietary and contractual right, intellectual property rights, inheritance rights, etc.

Existence of two main systems of organization (structure) of private law – institutional and pandect – was traditional for private (civil) law.

Institutional system of organization (structure of civil law) includes the following institutions: persons, things, and means of buying things.

Pandect system consists of the following parts: general provisions, property law, contractual law, family law, inheritance law.

Its advantages: singling out of general part, which allows avoiding repetitions when characterizing certain institutions, a clear division into sections (sub-branches), etc. And with it, unlike the institutional system, civil status of a person

supposedly passes into the background here, which does not meet modern trends of development of civil law.

However, it should be taken into consideration that neither one nor another system exists in its pure form.

Although some civil codes are built by institutional (the Civil Code of France) or pandect system (the Civil Code of Germany), but the structure of civil law as a branch now looks more difficult.

In particular, it covers:

1. General provisions.
2. Legal status of a person.
3. Property rights (Rights to things).
4. Intellectual property rights.
5. Agreements (contractual obligations).
6. Non-contractual obligations.
7. Inheritance law.
8. Family Law. (In Ukraine, it is traditionally treated as a separate branch, but in fact it belongs to the sphere of civil law).

Speaking about the structure of civil law, it should be noted that differentiation of it into general and special parts is arguable.

This differentiation is impractical, because there is no universal «general part» in civil law. However, the «general part» consists as if of two levels: there are provisions common to the whole civil law and there is a general part of obligatory law. Moreover, the third level – general part of contractual law, general part of non-contractual obligations, general issues of inheritance law, etc – is possible. Therefore, it is always impossible to separate the «general part» as such.

In this regard, it is advisable to speak not about General and Special part, but about some sections of civil law. And first section of civil law covers its general provisions. The following sections are generally adequate to relevant sub-branches of civil

law; moreover, each of them has its own «general» and «special» parts.

Separation of civil law from other branches of law are:

Civil and administrative law. Imperative method is used in administrative law.

Civil and labor law. Labor force is not recognized as an article of commerce; therefore labor law is separated into an independent branch.

Civil and ecological law. Land and other natural resources are in circulation of late years; therefore relations concerning them are a subject of civil law.

Civil and financial law. Money is not a measure of cost and performs an accumulation function within the framework of financial relations (Article 1 (2) of the Civil Code of Ukraine).

Civil and family law. Property relations between family members have personal nature, therefore it is a separate branch.

TEXT 10
Civil Law

1. Although most laymen's perception of law is associated with criminal acts, in fact the greater part of our law is civil law. For the most part civil law is concerned with the rights and duties of individuals (including legal individuals such as limited liability companies) as between themselves. Among civil law branches are such as Family law, Property law, Civil Rights law, Media law, Education law, Consumer protection law, Environmental law, etc.

2. The main areas of civil law with which a business may be concerned are: Law of contract. This is concerned with the enforcement of promises, usually in the form of agreements. Such agreements may be formal written agreements or informal oral agreements, or even agreements to be implied from conduct.

3. Law of tort. A tort is a civil wrong, other than a breach of contract or a breach of trust (both of which are civil wrongs but are not torts), which may be remedied by an action for damages. Unlike contract the duty which is breached in committing a tort is fixed by the law, whereas the duty which is breached in committing a breach of contract is a duty undertaken voluntarily as a result of a promise to the other party. There are quite a number of individual torts: e.g. negligence, nuisance, trespass (to person, to goods, or to land), defamation, and deceit. 15.

4. Commercial law. This law comprises the rules relating to specific types of contract such as sale of goods, supply of services, hire purchase, insurance, consumer credit, carriage of goods, etc.

5. Company law. This is the field of law concerning companies, corporations, partnerships and other business organizations. It also specifies the relationship between a business entity and outside parties who commercially interact with it.

6. Labour law. This can be divided into two parts. First, there is employment law – the part which regulates individual employment rights, for example, the rules relating to unfair dismissal, the right to redundancy payment, equal pay, etc. Secondly, there is industrial law – the part which relates to collective activity, for example, the law relating to industrial action, admission to and expulsion from trade unions, etc. Some employment law, particularly in the area of health and safety, is criminal law.

7. Land law. The main areas which concern businesses are the law relating to the relationship of landlord and tenant and planning law. 8. It is extremely important to understand that a particular course of conduct can give rise to consequences in both civil law and criminal law at the same time. For example, the crime of murder (and most other criminal offences involving

physical injury) will at the same time involve the torts (that is, the civil wrongs) of assault and battery. The crime of causing criminal damage will amount to the tort of trespass to goods. The crime of causing death by dangerous driving will amount to the tort of negligence.

TEXT 11
ПЛЕНУМ ВЕРХОВНОГО СУДУ УКРАЇНИ

Пленум Верховного Суду України є колегіальним органом, повноваження якого визначають Конституція та закони України. До складу Пленуму входять усі судді Верховного Суду України.

Пленум Верховного Суду України: обирає на посади та звільняє з посад Голову Верховного Суду України, його заступників у порядку, установленому законодавством; призначає на посаду із суддів Верховного Суду України за поданням Голови Верховного Суду України та звільняє з посади секретаря Пленуму Верховного Суду України; заслуховує інформацію Голови Верховного Суду України, заступника Голови Верховного Суду України про їхню діяльність; надає висновки щодо проєктів законодавчих актів, які стосуються судової системи та діяльності Верховного Суду України; ухвалює рішення про звернення до Конституційного Суду України з питань конституційності законів та інших правових актів, а також щодо офіційного тлумачення Конституції та законів України; надає висновок про наявність чи відсутність у діяннях, у яких звинувачують Президента України, ознак державної зради або іншого злочину; вносить за зверненням Верховної Ради України письмове подання про неможливість виконання Президентом України своїх повноважень за станом здоров'я; затверджує Регламент Пленуму Верховного Суду України. Визначає персональний склад судових палат.

Засідання Пленуму Верховного Суду України є повноважним за умови присутності на ньому не менше ніж двох третин від складу Пленуму, крім випадків, установлених законодавством. На засідання Пленуму можуть бути запрошені представники органів державної влади, наукових установ, громадських організацій, засобів масової інформації та інші особи.

Пленум Верховного Суду України скликає Голова Верховного Суду України в разі потреби або на вимогу не менш як четвертої частини від складу суддів Верховного Суду України, але не рідше ніж один раз на три місяці. За відсутності Голови Верховного Суду України Пленум скликає Перший заступник. Законом також може бути встановлена інша процедура скликання Пленуму Верховного Суду України. Про день і час скликання Пленуму та питання, що виносять на його розгляд, учасників засідання Пленуму повідомляють не пізніш як за десять днів до засідання. У цей же строк надсилають матеріали щодо питань, які виносять на розгляд Пленуму.

TEXT 12
BALDWIN V. HALE

Nos. 87 and 88 – James W. Baldwin, Plaintiff in Error, vs. Oscar C. Hale, Defendant in Error. – This is a writ of error to the Circuit Court of the United States for the District of Massachusetts, in which Court HALE brought an action of assumpsit upon a promissory note made by Baldwin at Boston, where he resided, in favor of the defendant in error, who, at the time was, and since has been a citizen of the State of Vermont. The note was made payable at Boston. After the making of the note, and before the suit was brought, the plaintiff in error, pursuant to the laws of Massachusetts existing prior to the making of the note, obtained a certificate of discharge from his debts, embracing, by its terms, all contracts made or to be

performed within that State after the passage of those laws. The defendant in error took no part in the proceedings of the plaintiff in error to obtain such discharge. The plaintiff in error, who was the defendant below, pleaded the discharge so obtained in bar of the action upon the note. The Court below held that it could not avail as a defence to the action, and gave judgment for the plaintiff, and the defendant sued out a writ of error to the Supreme Court, and now becomes plaintiff in error.

In behalf of the plaintiff in error it was argued that the several States of the Union possess all the legislative power of sovereign and independent States, except so far as that power is limited by the Constitution of the United States; that in matters of contract the only limitation on the States is that which prohibits laws impairing the obligation of contracts, and it was long since decided that State insolvent laws not operating retrospectively (such being the character of those under which the discharge here pleaded was granted,) do not fall within this constitutional prohibition. The law of Massachusetts in this case then possesses all the validity and force which the State of Massachusetts with an uncontrolled power of legislation on the subject, and in the absence of any constitutional restraint, could impart to it. It is not contended that this insolvent law, or any other State law relating to property possesses any extra territorial force, the legislative sovereignty of each State being confined to its own limits, and the lex loci in each case furnishes the only rule for avoiding conflict, at least in regard to contracts. To sustain the position that when the place both of origin and execution of the contract is the same, the contract is to be governed wholly by the law of that place, reference is made to the decisions in the cases of Cox vs. The United States, 6 Peters' Reports, p. 172; Strother vs. Lucas, 12 Peters' Reports, p. 436; Andrews vs. Pond, 13 Peters' Reports, p. 77; and Bell vs. Bruen, 1st Howard's Reports, 182.

Passages in Story's Conflict of Laws and cases decided in Cushing's and Gallison's Reports, are relied upon to maintain that a contract discharged by the law of the place which governs it is discharged everywhere. Upon precisely the same state of facts as is presented in this case, the Supreme Court of the State of Massachusetts, in a recent case, held such a discharge a good defence in a suit brought by a nonresident creditor – Scribner vs. Fisher, 2 Gray's Reports, p. 43. In the case of Ogden vs. Saunders, 12 Wheaton's Reports, p. 213, the Supreme Court of the United States decided that the insolvent laws of the State of the origin of the contract are not competent to discharge a contract when entered into by one of its citizens with a citizen of another State or a foreign country, where no place of performance is fixed otherwise than by the origin of the contract. It is contended that that decision does not apply to the present case, because it was founded solely upon international law, and in the present case the place was expressly fixed for the performance of the contract and the law of that place must apply to it.

TEXT 13
МІСЦЕВІ СУДИ В УКРАЇНІ

Місцевий суд є основною ланкою в системі судів загальної юрисдикції. Це випливає насамперед із того, що суди саме цього рівня розглядають усі кримінальні, цивільні, господарські та адміністративні справи, за винятком тих, які віднесені законодавством до компетенції інших судів.

До місцевих загальних судів належать:

– районні, районні у містах, міські та міськрайонні суди;

– військові суди гарнізонів.

Військовий суд гарнізону є структурним елементом системи військових судів і утворюється на території, де

розташований один або кілька гарнізонів. Створення військових судів зумовлене низкою причин. Так, розгляд справ у військових злочинах потребує від суддів знання особливостей проходження військової служби, умов життя та побуту в армії. Крім того, структура управління армією ускладнює використання можливостей районних і міських судів, оскільки управління армією здійснюється не за адміністративно-територіальним поділом. Підсудність справ військовому суду гарнізону визначає процесуальний закон. Зокрема відповідно до ст. 36 КПК України військовим судам гарнізонів як судам першої інстанції підсудні справи про злочини осіб, які мають військове звання до підполковника, капітана другого рангу, крім справ, що підсудні військовим судам вищого рівня.

Засади організації та діяльності місцевих судів закріплені в Конституції, законах України «Про судоустрій України», «Про статус суддів» і деяких інших нормативних актах.

Суд цього рівня утворюють у районі, місті та районах міста. У назві місцевого суду використовують назву населеного пункту, у якому він розташований.

Місцевими господарськими судами є господарські суди Автономної Республіки Крим, областей, міст Києва та Севастополя, а місцевими адміністративними судами – окружні суди, які утворюють в округах відповідно до Указу Президента України.

До складу місцевого суду входять: судді місцевого суду, голова та заступник голови суду. У місцевому суді, у якому кількість суддів перевищує п’ятнадцять, може бути призначений більше ніж один заступник голови суду.

За своїми повноваженнями місцевий суд є судом першої інстанції і розглядає справи, віднесені процесуальним законом до його підсудності. Зокрема місцеві загальні суди розглядають кримінальні та цивільні справи, а також

справи про адміністративні правопорушення; місцеві господарські суди розглядають справи, що виникають із господарських правовідносин, а також інші справи, віднесені процесуальним законом до їхньої підсудності; місцеві адміністративні суди розглядають адміністративні справи, пов'язані із правовідносинами у сфері державного управління та місцевого самоврядування (справи адміністративної юрисдикції), крім справ адміністративної юрисдикції у сфері військового управління, розгляд яких здійснюють військові суди.

Порядок призначення (обрання) суддів до місцевого суду визначений Конституцією України (статті 126 і 128) та Законом України «Про статус суддів» (ст. 9).

Голову місцевого суду та його заступника призначає на посаду строком на п'ять років із суддів і звільняє з посади Президент України за поданням Голови Верховного Суду України (а щодо спеціалізованих судів – голови відповідного вищого спеціалізованого суду) на підставі рекомендації Ради суддів України (щодо спеціалізованих судів – рекомендації відповідної ради суддів).

Обов'язки голови місцевого суду досить широкі. Він, зокрема, здійснює організаційне керівництво діяльністю суду; визначає обсяг обов'язків заступника (заступників) голови суду; на підставі акта про призначення на посаду судді чи обрання суддею безстроково або припинення повноважень судді видає відповідний наказ; приймає на роботу й звільняє працівників апарату суду, присвоює їм ранги державного службовця в установленому законом порядку, застосовує щодо них заохочення та накладає дисциплінарні стягнення; здійснює заходи щодо забезпечення формування складу народних засідателів; організовує ведення судової статистики; проводить роботу щодо підвищення кваліфікації працівників апарату суду; представляє суд у відносинах з іншими органами державної

влади, органами місцевого самоврядування, громадянами та організаціями; здійснює інші передбачені законом повноваження,

Голова місцевого суду з питань, що належать до його повноважень, видає накази й розпорядження.

Як суддя голова суду здійснює правосуддя в судових справах.

Належна організація роботи місцевого суду має велике значення для забезпечення виконання покладених на нього функцій. Завдання організувати роботу суду покладене на голову суду.

Голова суду розподіляє обов'язки між суддями. Для забезпечення ефективної роботи місцевих судів щодо здійснення правосуддя діє апарат суду, структуру й штатну кількість яких затверджує Міністерство юстиції в установленому порядку за поданням голови суду.

Голова суду добирає, приймає на роботу й звільняє з посади працівників, яких не обирають: консультантів, секретарів суду та судового засідання, завідувача канцелярії, діловода, архіваріуса тощо.

TEXT 14
Marriage

Anthropologists agree that the institution of marriage began as a way to connect the families of the bride and groom. It was usually arranged between the families and often accompanied by an exchange of property (usually from the wife's family to that of the husband, in the form of the «bride price» or «dowry») and the formation of alliancies. In partrirchal societies, a young woman or a girl would leave her family and join that of her husband.

The modern notion of companionate marriage is very different. It also involves along-termcommitment between a man and a woman, but it is a relationship which they enter into

voluntarily. Unlike traditional marriage, modern marriage resembles a partnership, a relationship of equals. Many women in such marriages, for example, work outside the home. They are more likely to have some degree of economic independence, accordingly, although they usually earn less that tneir husbands.

Both kinds of marriages may be found throughout the world. .... Modern marriages are most common in the industrialized North, although more traditional groups within those societies may opt for some form of traditional marriage. Among fundamentalist religious groups, such as Christian Mormons in the United States or Orthodox Jews in Israel, for example, traditional marriage is often favored.

A crucial function of both traditional and modern marriage is to establish a stable framework in which children will be cared for and supported, emotionally as well as financially. Marriage rates are falling in some regions, however, especially in northern Europe. This reflects, in part, a growing number of couples who choose to live together without marrying. Increasing numbers of children are born out of wedlock. In addition, a growing, but still small, number of couples opt for «child free» marriages in the industrialized North. In the developing South, in contrast, barrenness is often a ground for annulment or divorce.

Many States recognize multiple forms of marriage, including religious and civil marriages. Traditional marriages usually involve a religious ceremony, while modern marriage is often entered into through a secular, civil ceremony.

TEXT 15
Marriage and Civil Partnership in the UK

Marriage is not a contract which can be created and terminated at the will of the parties. It is an arrangement in which the State has an interest. For this reason, there are legal rules governing the creation of a marriage, and rules governing

its dissolution. The legal effect of marriage is to give the parties various rights, obligations, privileges. To contract a valid marriage the parties must have the capacity to marry and must comply with certain legal formalities relating to the creation of the marriage, otherwise marriage may be void.

Section 11 Matrimonial Causes Act (MCA) 1973 provides that the parties have capacity to marry

if:

(a)they are not within the prohibited degrees of relationship;

(b)they are both over the age of 16;

c) neither of them is already married; and

(d) one of them is male and the other female.

Contracting a Valid Marriage – Preliminary Formalities

In addition to having the capacity to marry, the parties must satisfy certain preliminary formalities before the marriage can take place. The purpose of these preliminaries establish that the required consents have been given and that there are nolawful impediments to the marriage taking place. The marriage ceremony itself must also comply with certain formalities, and the marriage must be registered.

Two systems of preliminary formalities exist: (a) one for all marriages other than celebrated in the Church of England; and (b) one for Church of England marriage.

Civilpreliminariesforallmarriages

All marriages, other than Church of England marriages, must be preceded by preliminary formalities for which the superintendent registrar of the relevant district is responsible under Registration Act 1953. A marriage can be solemnized in a register office or in any venue that has been approved for the purpose of civil marriage but only after the grant of: (i) a superintendent registrar's certificate; or (ii) a Registrar General's licence.

Void and voidable marriages – the law of nullity

The law of nullity is laid down in Part I of the Matrimonial Causes Act (MCA) 1973. Like divorce, an annulment is granted in two stages: decree nisi followed by decree absolute. Only on the grant of the decree absolute is the marriage annulled. A decree can be sought at any time – there is no bar on seeking a decree during the first year of marriage, as there is for divorce. On or after the grant of the decree, the court has jurisdiction to make finance and property orders under Part II of the MCA 1973.

Nullity petitions are relatively uncommon when compared with divorces. Only 406 petitions for nullity of marriage were filed in the courts in 2006.

A decree of nullity can be sought on the ground that the marriage is (a) void or (b)voidable.

TEXT 16

Grounds on which a marriage is void

A void marriage is one that is void ab initio (right from the beginning). A decree of nullity is not technically necessary to dissolve a void marriage, but is useful because it gives the court jurisdiction to make finance and property orders equivalent to those which can be made on divorce. A third party may bring proceedings in respect of a void marriage. A void marriage is different from a non-marriage'. A marriage is void on the following grounds:

Section 11 Matrimonial Causes Act 1973

A marriage celebrated after 31st July 1971 shall be void on the following grounds only, that is to say –

(a) that it is not a valid marriage under the provisions of the Marriage Acts 1949 to 1986, that is to say where –

(i)the parties are within the prohibited degrees of relationship;

(ii)either party is under the age of sixteen; or

(iii)the parties have intermarried in disregard of certain requirements as to the formation of marriage;

(b)that at the time of the marriage either party was already lawfully married;

(c)that the parties are not respectively male and female;

(d) in the case of a polygamous marriage entered into outside England and Wales, that either party was at the time of the marriage domiciled in England and Wales.

There are no (bars) (statutory defences) for void marriages as there are for voidable marriages. As far as children are concerned, a child born after a void marriage is treated in law as a legitimate child if at the time of conception (or at the time of the marriage ceremony, if later) one party (or both parties) reasonably believed that the marriage was valid (s.l Legitimacy Act 1976, as amended).

Grounds on which a marriage may be voidable

A voidable marriage is a marriage which is a valid and subsisting marriage until annulment by a decree of nullity (s. 16 MCA 1973). A marriage is void on the following grounds:

Section 12 Matrimonial Causes Act 1973

A marriage celebrated after 31st July 1971 shall be voidable on the following grounds only, that is to say –

(a)that the marriage has not been consummated owing to the incapacity of either party to consummate it;

(b)that the marriage has not been consummated owing to the wilful refusal of the respondent to consummate it;

(c)that either party to the marriage did not validly consent to it, whether in consequence of duress, mistake, unsoundness of mind or otherwise;

(d)that at the time of the marriage either party, though capable of giving a valid consent, was suffering (whether continuously or intermittently) from mental disorder within the meaning of the Mental Health Act 1983, of such a kind or to such an extent as to be unfitted for marriage;

(e)that at the time of the marriage the respondent was suffering from venereal disease in a communicable form;

(f)that at the time of the marriage the respondent was pregnant by some person other than the petitioner;

(g)that an interim gender recognition certificate under the Gender Recognition Act 2004 has, after the time of marriage, been issued to either party to the marriage;

(h)that the respondent is a person whose gender at the time of the marriage had become the acquired gender under the Gender Recognition Act 2004.

TEXT 17
Types of Legal Systems

Legal systems vary from country to country, and sometimes within a single country. Although they develop in different ways, legal systems also have some similarities based on historically accepted justice ideals. Legal systems do fall into groups or patterns with some similar features within each group. Among the main groups that you might encounter are: 1) common law; 2) civil law; 3) religious law; and 4) customary law. Many countries employ more than one of these systems at the same time to create a hybrid system. In some places, the current security situation can also impact the way that legal systems work. It is helpful to understand some of the similarities and differences as you move through your case.

Common Law Legal Systems

General principles:

– The laws governing a case are based on both legal precedent, created by judges, and statutory laws, created by legislatures;

– Usually an adversarial system, where the judge acts as an impartial referee between opposing parties to a case;

– A jury may determine the facts , and a judge will decide the law to be applied;

– There is an active role for prosecutors and defense attorneys;

– Victims have a role as witnesses and may have rights as a victim to receive information and limited participation – however, victims are not a party in criminal cases;

– The U.S. and the U.K. are examples of common law systems.

Common law was originally developed by judges through case-by-case court decisions, rather than through legislation enacted by a legislature. In this system, much of the law is made

by judges' decisions, called precedent. This means that if a similar case has been resolved by a court in the past, a court is bound to follow the reasoning used in the prior decision. While judges are very important in common law systems, legislatures still have a part to play. Common law systems also rely on statutes that are passed by the legislature or a parliament, and judges have the role of interpreting how the legislature's laws are applied in individual cases. In common law legal systems, legal proceedings are mostly adversarial, rather than inquisitorial. This means that for the most part, two opposing parties (adversaries) appear before a judge who moderates. Defendants are entitled to be present and to be represented by a lawyer. The attorneys on both sides generally have an active role in representing their clients throughout the case and in presenting evidence and arguments in court. A jury of people without legal training can decide the facts of the case, and if there is a conviction, then a judge determines the appropriate sentence based on the jury's verdict.

Civil Law Legal Systems

General principles:

– Most of the law is statutory law created by legislatures and not by judges following precedent;

– Usually an inquisitorial system, where an investigating judge is actively involved in investigating the facts of a case;

– Juries are rarely used; a judge or panel of judges will decide the facts and the law to be applied;

– Prosecutors and defense attorneys may play a more limited role;

– Victims may be parties and have rights regarding their involvement, which may include having their own attorneys and filing the initial charges;

– In many civil law systems, victims may bring civil claims, e.g., for monetary damages, in the context of a criminal prosecution.

– Many European countries, including France and Germany, and a number of North, Central and South American countries, like Mexico and Brazil, are examples of civil law systems.

Civil law systems place greater emphasis on legal codes crafted by the legislature. Civil law statutes tend to be more detailed than statutes under common law systems, and contain continuously updated legal codes that specify all matters capable of being brought before a court, the procedure to be followed, and the appropriate punishment.

Civil law systems rely less on judges and more on academic legal experts to make legal interpretations. In a civil law system, the judge's role is to establish the facts of the case and to analyze and apply the legislature's written laws. Because of this, legislators and legal scholars who draft and interpret the codes are important in civil law legal systems. The role of judges is different in civil law systems compared to common law systems.

There are two types of judges in a civil law system: an investigating judge (or magistrate) and trial or sitting judges. Civil law systems are based on the belief that justice is best served when a judge is an active participant in investigating the facts of the case, thus the investigating judge or magistrate will typically lead the investigation.

Unlike common law systems, which focus on the trial to determine the facts, civil law legal systems mostly focus on pre-trial investigation and hearings to establish the facts. The actual trials can be relatively brief and informal because the trial judge will review the case file developed by an investigating judge. During trial, witnesses are generally allowed to give additional

kinds of evidence and the defendant often gives a statement. Cross examination is rare.

TEXT 18
Other Legal Systems – Customary Law and Hybrid Legal Systems

Customary law – Countries that do not historically have strong formal justice systems may rely upon customary law. Customary law is generally found at the tribal or local level in districts, counties, and villages, and is a vast set of practices that vary from community to community. These traditional rights and obligations are generally unique to a particular society or culture. Customary law is based on longstanding local customs which greatly shape the ideas of justice. Customary law is often oral, not written. It generally uses a case-by-case approach to dispute resolution. Customary law can sometimes involve informal mediation or arbitration, and typically does not include a formal trial. Customary law frequently becomes a function of tribal or village elders in the absence of a functioning formal justice system, as in a conflict or post-conflict country. Hybrid Legal Systems – Countries may have mixed legal systems that draw on common law and/or civil law traditions, mixed with customary or religious laws. For example, Islamic law operates alongside civil or common law in some countries. India has a common law system combined with separate personal law codes that apply to Muslims, Christians, and Hindus. Pakistan's legal system combines common law and Islamic law. Nepal's legal system combines Hindu legal concepts and common law. The Philippines has a mixed legal system of civil, common, Islamic and customary law. Sri Lanka's legal system combines civil law, common law and customary law. Most Pacific island countries recognize customary law as well as common law. In some African countries, customary law still has great influence,

and local values play a role in informal justice systems and accountability.

TEXT 19

Стаття 12. Змагальність сторін

1. Цивільне судочинство здійснюється на засадах змагальності сторін.

2. Учасники справи мають рівні права щодо здійснення всіх процесуальних прав та обов'язків, передбачених законом.

3. Кожна сторона повинна довести обставини, які мають значення для справи і на які вона посилається як на підставу своїх вимог або заперечень, крім випадків, установлених цим Кодексом.

4. Кожна сторона має ризик настання наслідків, пов'язаних із вчиненням чи невчиненням нею процесуальних дій.

5. Суд, зберігаючи об'єктивність і неупередженість:

1) керує ходом судового процесу;

2) сприяє врегулюванню спору за допомогою досягнення угоди між сторонами;

3) роз'яснює в разі необхідності учасникам судового процесу їхні процесуальні права та обов'язки, наслідки вчинення або невчинення процесуальних дій;

4) сприяє учасникам судового процесу в реалізації ними прав, передбачених цим Кодексом;

5) запобігає зловживанню учасниками судового процесу їхніми правами та вживає заходів для виконання ними їхніх обов'язків.

Стаття 13. Диспозитивність цивільного судочинства.

1. Суд розглядає справи не інакше як за зверненням особи, поданим відповідно до цього Кодексу, у межах заявлених нею вимог і на підставі доказів, поданих

учасниками справи або витребуваних судом у передбачених цим Кодексом випадках.

2. Збирання доказів у цивільних справах не є обов'язком суду, крім випадків, установлених цим Кодексом. Суд має право збирати докази, що стосуються предмета спору, з власної ініціативи лише у випадках, коли це необхідно для захисту малолітніх чи неповнолітніх осіб або осіб, визнаних судом недієздатними чи дієздатність яких обмежена, а також в інших випадках, передбачених цим Кодексом.

3. Учасник справи розпоряджається своїми правами щодо предмета спору на власний розсуд. Таке право мають також особи, в інтересах яких заявлені вимоги, за винятком тих осіб, які не мають процесуальної дієздатності.

4. Суд залучає відповідний орган чи особу, які за законом мають право захищати права, свободи та інтереси інших осіб, якщо дії законного представника суперечать інтересам особи, яку він представляє.

Стаття 14. Єдина судова інформаційно-телекомунікаційна система.

1. У судах функціонує Єдина судова інформаційно-телекомунікаційна система.

2. Позовні та інші заяви, скарги та інші передбачені законом процесуальні документи, що подають до суду і можуть бути предметом судового розгляду, у порядку їхнього надходження підлягають обов'язковій реєстрації в Єдиній судовій інформаційно-телекомунікаційній системі в день надходження документів.

3. Визначення судді або колегії суддів (судді-доповідача) для розгляду конкретної справи здійснюють за Єдиною судовою інформаційно-телекомунікаційною системою в порядку, визначеному цим Кодексом (автоматизований розподіл справ).

4. Єдина судова інформаційно-телекомунікаційна система відповідно до закону забезпечує обмін документами (надсилання та отримання документів) в електронній формі між судами, між судом та учасниками судового процесу, між учасниками судового процесу, а також фіксування судового процесу і участь учасників судового процесу у судовому засіданні в режимі відеоконференції.

5. Суд направляє судові рішення, судові повістки, судові повістки-повідомлення та інші процесуальні документи учасникам судового процесу на їхні офіційні електронні адреси, вчиняє інші процесуальні дії в електронній формі із застосуванням Єдиної судової інформаційно-телекомунікаційної системи в порядку, визначеному цим Кодексом і Положенням про Єдину судову інформаційно-телекомунікаційну систему.

6. Адвокати, нотаріуси, приватні виконавці, арбітражні керуючі, судові експерти, державні органи, органи місцевого самоврядування та суб'єкти господарювання державного та комунального секторів економіки реєструють офіційні електронні адреси в Єдиній судовій інформаційно-телекомунікаційній системі в обов'язковому порядку. Інші особи реєструють офіційні електронні адреси в Єдиній судовій інформаційно-телекомунікаційній системі в добровільному порядку.

7. Особам, які зареєстрували офіційні електронні адреси в Єдиній судовій інформаційно-телекомунікаційній системі, суд надсилає будь-які документи у справах, у яких такі особи беруть участь, виключно в електронній формі за допомогою їхнього направлення на офіційні електронні адреси таких осіб, що не позбавляє їх права отримати копію судового рішення в паперовій формі за окремою заявою.

8. Реєстрація в Єдиній судовій інформаційно-телекомунікаційній системі не позбавляє права на подання документів до суду в паперовій формі.

Особи, які зареєстрували офіційні електронні адреси в Єдиній судовій інформаційно-телекомунікаційній системі, можуть подати процесуальні, інші документи, вчинити інші процесуальні дії в електронній формі виключно за допомогою Єдиної судової інформаційно-телекомунікаційної системи з використанням власного електронного цифрового підпису, прирівняного до власноручного підпису відповідно до Закону України «Про електронний цифровий підпис», якщо інше не передбачене цим Кодексом.

Особливості використання електронного цифрового підпису в Єдиній судовій інформаційно-телекомунікаційній системі визначені Положенням про Єдину судову інформаційно-телекомунікаційну систему.

9. Суд проводить розгляд справи за матеріалами судової справи в електронній формі. Процесуальні та інші документи і докази у паперовій формі не пізніше ніж три дні із дня їхнього надходження до суду переводять в електронну форму та долучають до матеріалів електронної судової справи в порядку, визначеному Положенням про Єдину судову інформаційно-телекомунікаційну систему.

За неможливості розгляду справи судом в електронній формі з технічних причин більше ніж п’ять днів, що може перешкодити розгляду справи у строки, установлені цим Кодексом, справу розглядають за матеріалами в паперовій формі, для чого всі матеріали справи невідкладно переводять у паперову форму в порядку, установленому Положенням про Єдину судову інформаційно-телекомунікаційну систему.

10. Процесуальні та інші документи і докази в паперовій формі зберігають у додатку до справи в суді

першої інстанції та за необхідності можуть бути оглянуті учасниками справи чи судом першої інстанції або витребувані судом апеляційної чи касаційної інстанції після надходження до них відповідної апеляційної чи касаційної скарги.

11. Несанкціоноване втручання в роботу Єдиної судової інформаційно-телекомунікаційної системи та в автоматизований розподіл справ між суддями тягне за собою відповідальність, установлену законом.

12. Єдина судова інформаційно-телекомунікаційна система підлягає захисту із застосуванням комплексної системи захисту інформації з підтвердженою відповідністю.

13. Положення про Єдину судову інформаційно-телекомунікаційну систему затверджує Вища рада правосуддя за поданням Державної судової адміністрації України та після консультацій із Радою суддів України.

TEXT 20

Вид цивільного судочинства зазвичай визначають як урегульований нормами цивільного процесуального права порядок здійснення правосуддя в цивільних справах, подібних за своєю матеріально-правовою природою, що зумовлює певні процесуальні особливості їхнього судового розгляду і вирішення. Він є порядком розгляду передбачених у законі та поєднаних у певні групи цивільних справ у суді першої інстанції, який обумовлений матеріально-правовою природою справ, що входять до групи, і характеризується самостійними засобами і способами захисту прав та інтересів, а також особливостями судової процедури, що випливають із цього. Особливості (специфіка) у порядку розгляду тієї чи іншої категорії справ завжди обумовлені їхньою матеріально-правовою природою. Учені-процесуалісти зазвичай визнають, що

поділ цивільного процесу на три види судових проваджень пов'язаний зі специфікою матеріально-правового характеру справ, які розглядають у кожному з видів проваджень, і ця специфіка обумовлює процесуальні особливості їхнього розгляду. Види проваджень, які існують у цивільному процесі, відрізняються один від одного за об'єктом процесуальних правовідносин, що виникають у кожному з видів проваджень, за суб'єктами цих процесуальних правовідносин, за змістом процесуальних правовідносин та за іншими ознаками.

На підставі того, що кожен вид цивільного судочинства характеризується самостійними засобами захисту права, а це, зі свого боку, зумовлює застосування специфічних способів захисту і побудови особливої процедури, проблема критерію може бути успішно розв'язана, як раніше зазначали окремі науковці, у тому разі, якщо будуть знайдені та пояснені деякі суттєві ознаки, які характеризують кожний із засобів захисту права.

Отже йдеться про визначення та розмежування понять «позов», «скарга», «заява». Традиційно критерій вбачався в предметі процесу – матеріально-правовій природі справ, яка і впливає на процесуальний порядок їхнього розгляду і вирішення. Саме існування видів проваджень можна пояснити впливом регулятивного (матеріального) права на механізм захисту. Цей підхід розвиває відомий у науці цивільного процесуального права погляд на розуміння виду провадження як процесуальної категорії, похідної від природи розглядуваних судом цивільних справ.

Обґрунтування тези про те, що онтологічно існування видів провадження обумовлене матеріально-правовою природою розглядуваних судом цивільних справ, дав Д. М. Чечот у 1969 р. Це визнана позиція. Існує й думка про те, що визначальною ознакою видової кваліфікації цивільної справи має бути предмет судової діяльності.

Не заперечуючи зовнішньої диференціації цивільного процесу на види цивільного судочинства, ми ратуємо за внутрішню диференціацію на судові процедури в межах виду цивільного судочинства та вважаємо, що регламентація процесуальної діяльності не може обмежуватися визначенням загального (єдиного) порядку цивільного судочинства для всіх без винятку категорій справ у межах того чи іншого виду цивільного судочинства під час провадження в суді першої інстанції. Адже особливість правового регулювання цивільних процесуальних правовідносин полягає в тому, щоб правова регламентація охоплювала кожну процесуальну дію суду та кожну процесуальну дію учасника процесу, зокрема з урахуванням характеру спору.

Усе це об'єктивно зумовлює постановку низки питань. Наскільки ефективно види цивільного судочинства захищають матеріальні права й інтереси громадян? Чи є наведені критерії поділу цивільного судочинства на такі види виправданими з практичного погляду? Чи дійсно такий поділ охоплює матеріально-правові й процесуальні особливості розгляду справ щодо захисту порушених, невизнаних або оспорюваних прав, свобод чи інтересів, що виникають із цивільних, житлових, земельних, сімейних, трудових та інших відносин? Чи є правильним, з погляду процесуальної економії й ефективності цивільного судочинства поширювати правила того чи іншого виду цивільного судочинства на всі справи щодо захисту порушених, невизнаних або оспорюваних прав, свобод чи інтересів, що виникають із цивільних, житлових, земельних, сімейних, трудових відносин, без урахування винятків і доповнень у частині підсудності, суб'єктного складу сторін, особливостей доказування і виконання рішення тощо?

Згідно з поширеною в юридичній літературі думкою будь-який вид цивільного судочинства характеризується

тим, що він: 1) зумовлений особливим предметом судового розгляду, щодо якого суд повинен винести постанову (зумовлений особливою групою матеріальних правовідносин, що є предметом судового розгляду); 2) будується тільки відповідно до тих процесуальних принципів, які найбільш адекватно підкреслюють специфіку судової діяльності залежно від характеру тих справ, які передають на розгляд суду; 3) розрахований на застосування тільки судом першої інстанції; 4) складається з відокремленої групи (сукупності) цивільно-процесуальних норм, що характеризуються якісною однорідністю, внесені до розділів, підрозділів або глав ЦПК та спеціально пристосовані для розгляду відповідних категорій цивільних справ (являє собою особливу процесуальну форму розгляду і вирішення цивільних справ); 5) установлює особливі правила розгляду і вирішення певних категорій цивільних справ; 6) має певну мету, яку повинен досягти суд під час розгляду справ, віднесених законом до даного виду судочинства (мають мету забезпечити найкраще судовий захист матеріальних прав і інтересів, які є предметом судового розгляду). Тобто види судочинства – це різні структурні диференціації, які становлять мініпроцеси в межах єдиної цивільної процесуальної форми.

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Навчальне видання

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ЦИВІЛЬНЕ ПРАВ0

Навчальний посібник

(Англійською мовою)

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