

Law for Business

Quiz 1

Write the answer to the question

What is law for you?

- The police.
- The government's behavior.
- The reflection of the people, organizations and values; it serves and controls.
- It comes from the past, reflects the present and paves the way to the future.

Effective manager

Quiz 2

Write the answers to the questions

- What is an effective manager?
- The one who develops the knowledge of both law and business.
- Why is that so important?

Think of it

- Remember and render situations in your lives where you really felt lack of knowledge of laws.

Legal rules

1. To create the rules – legislatures and government agencies
2. To enforce the rules – police forces
3. To resolve the disputes – courts

The law requires people to conform their behavior to a particular standard.

Law is

- A **set of principles** that:
 1. Have **general application** to society
 2. Developed by a **legitimate authority** within society
 3. “A **process of legal interpretation**” (court)
 4. May have **sanctions** against the law breakers

**How did the law
appear?**

1.The theory of the social contract

G. Grotskiy, G. Ghobbs, D. Lonk, Spinoza, F-F Rousseau, AN Radischev

To ensure a normal life, people conclude among themselves an agreement on the establishment of the state, voluntarily handing it some of their rights.

Noting the progressive nature of many of the social contract theory, which opposed the feudal state, the king in this society, tyranny, inequality, it should be noted that there is no scientific evidence supporting this theory. Also, this theory ignores the

2. The Theological Theory

Religious leaders of the ancient East, medieval Europe (Thomas Aquinas in the 13th century.), The ideologues of Islam and the modern Catholic Church (Jacques Maritain)

The idea of inviolability of the state, the need for submission to the will of the state, as the government of God, but at the same time, and depending on the state itself from the divine will, manifested through the church or other religious organizations. Judgment on the legality of the origin and use of the power of the ruler belongs to the church. People do not only have to fulfill the orders of the governor, which are at odds with the divine laws, but generally do not have to obey the usurpers and tyrants.

3. The Violence Theory

K.Kautsky, E.Dyuring, A. Gumpovich

Laws are for subordination of the weak to strong. Many states have appeared as a result of the conquest of one people by another. (Early German or Hungarian state)

To state emerged required. If the level of economic development that includes the state apparatus is not reached, no conquest can lead to the appearance of the state.

4. The Psychological Theory

G.Gard, L. Petrazhitsky

The emergence of the state and law is explained by the manifestation of the properties of the human psyche, the need to obey, depend on the elite of the society, the realization of justice, certain embodiments of actions and attitudes, and so forth. It is based on specific emotions that are experienced as internal obstacle to freedom and that encourage the person to any action. Norms as authoritarian prohibitions and commandments is only a reflection of these experiences. Psychological theory distinguishes ethical duty as a legal obligation and ethical duty as a moral duty.

Influence of the human psyche is not critical, and the mind itself is influenced by relevant economic, social and other conditions. These conditions

5. The Natural Law Theory

Lock, Rousseau, Montesquieu, Gholbach, Radishchev.

Apart from positive law created by the state, there is common to all men natural right, which stands above the positive law. The latter is based on the requirements of the natural law (the right to life, free development, labor, participate in the affairs of society and the state).

In a civilized society there is no reason to oppose natural and positive law, since the latter reinforces and protects the natural rights of man, making a

6. Normativizm

K. Bergbom, G. Shershenevich, J. Austin,
R. Shtammler

The rules are created by the state - the state's standards to meet the interests of the individual. The main thesis of legal positivism - the recognition of the law created by the state for the common good, or to satisfy the interests of the individual. However, only the justice which gets protection of the State is the law.

Many of her supporters were against the

7. The Sociological Theory

Ehrlikh, S. Muromtsev, G. Shershenevich.

Social norm - a norm of behavior applied to the external expressions of public life. It is the source of human well-being and is above the state.

Sociological theory fills its social content, argues that the right is a balancing force in the life of society. The ideas of this theory clearly express the essence of the rule of law in which the state itself and its citizens must obey the legal requirements in the interest of

Functions of law

1. Keeping the peace (prohibition of not authorized meetings in Russia)
2. Enforcing standards of conduct and maintaining order (outlaw desecration of the flag in Texas)
3. Facilitating planning (eg: contract laws)
4. Promoting social justice (tax laws - redistribute wealth)

It regulates behavior of an individual to make it acceptable to the majority of other individuals.

It shapes politics, economics and society in countless ways and serves as a social mediator in relations between people.

It regulates almost all spheres of social and political life either between public or private members of a society, either on national or international level.

Basic Notions

Rule:

An authoritative statement of **what to do or not to do** in a specific situation, issued by **an appropriate person or body**. It clarifies, demarcates, or interprets a law or policy

A statement that establishes a **principle or standard**, and **serves as a norm** for guiding or mandating action or conduct

Give examples of rules.

Where do you usually meet rules?

Norm:

A **standard** of achievement or behavior that is required, **desired**, or designated as **normal**

Informal guideline about **what is considered normal** (what is correct or incorrect) social behavior in a particular **group or social unit**.

Norms form the basis of collective expectations that members of a community have from each other, and play a key part in **social control** and

Give examples of norms.

Where do you usually meet norms?

Who makes norms?

Law (Statute): A set of rules adopted by a legislative body of a certain state for the purpose of regulating specific sphere of social relations.

Code: a systematic collection of laws and statutes regulating the specific sphere of social relations, adopted by a legislative body of a certain state

Tell the main differences
between
a law,
a norm and
a rule.

What laws or codes have you
come across?

Classification of law

1. Substantive law

Versus

2. Procedural law

1. Criminal law

versus

2. Civil law

Substantive law establishes

- 1. Rights and duties** for people as they act in society.

Duties take form of a command: “Do this!”,
“Don’t do that!”

Eg.: the Civil Rights Act of 1964 tells the employers that they **must not** discriminate among people on the basis of race, color, religion, sex etc.

- 2. Rights and privileges.**

Eg.: freedom of speech granted by the Constitution; the right for self-defense.

Procedural law establishes

- The rules as to what cases a court can decide
- How a trial is conducted
- How a judgment by a court is to be enforced

Criminal law defines

- Duties citizens owe to the society and prescribes penalties for violation
- Always statutory
- Requires legislative branch to define the elements of a crime

Civil law establishes

- **Private duties** owed by one person (including corporations or the government) to another
- Generally **doesn't aim to punish** but to make the wronged party whole through a money award – **damages**
- **Punitive damages** – for an outrageous behavior of a person committed a tort. (goes to the injured party)

Law:

- **National Law**

- **International Law:**

**International public
law**

**International private
law**

National Law

Main goal:

setting up a certain mode of behavior for everyone (state bodies, private entities, individuals etc.) within a jurisdiction of a certain state

Main functions:

- regulating economic activities;
- governing political activities;
- forming public legal consciousness;
- regulating the use of natural resources and environmental management;
- governing relations in such spheres as culture, science and education etc.

Main sources:

- Constitution
- Code(s)
- Law(s)/Statute(s)

Sources of International Law

Article 38 of the Statute of the International Court of Justice:

international conventions (general or particular) establishing rules expressly recognized by the contesting states;

international custom, as evidence of a general practice accepted as law;

the general principles of law recognized by civilized nations;

judicial decisions and the teachings of the

International conventions:

- generally referred to as treaties
- written agreements between States that are governed by international law
- referred to by different names, including agreements, conventions, covenants etc.
- may be bilateral, multilateral, regional and global
- have certain degree of primacy among other sources of international law

International custom (or customary law)

- evidence of a general practice accepted as law through a constant and virtually uniform usage among States over a period of time
- rules of customary international law bind all States

General Principles of Law

- often cited as a third source of law
 - apply in all major legal systems
 - usually used when no treaty provision or clear rule of customary law exists
- Example: No one can be punished for the same crime twice

International law

International Public Law (the law of states/nations)

- a body of customary or conventional rules which are considered as legal binding by civilized states in their intercourse with each other
- concerned mostly with the rights and obligations of sovereign states

International Private Law (the conflict of laws)

- part of national laws of a certain state that is aimed to decide whether a given case involving «foreign» element shall be adjudicated upon by domestic laws of a given state or by laws of some other state and shall be subject to the competence of courts of a given state or of some other state
- deals with cases in which some relevant fact has a connection with a foreign element and may on that ground raise a question as to

International Law v. National Law?

“Monist” tradition

both national law and international law form one unitary legal order

In case when national law conflicts with international law: to declare the supremacy of national over international law or to declare the supremacy of international over national law

“Dualist” tradition

national law and international law are two separate systems and non-overlapping legal orders: conflicts are thus impossible

international law must be transferred into national law, and existing national law that contradicts international law must be “transferred away”; It must be modified or eliminated in order to

Constitution of Ukraine provides

for:

✓ «Valid international treaties, the obligatory character of which is approved by the Verkhovna Rada of Ukraine. The conclusion of international treaties which contradicts the Constitution of Ukraine shall be possible only after the respective amendments to the Constitution of Ukraine are made» (Article 9)

✓ «International treaties are entered into by the President of Ukraine and, where it is required by law, should obtain the approval of the Verkhovna Rada of Ukraine». (Article 106 and Article 85)

✓ “The Constitutional Court of Ukraine upon the request of the President of Ukraine or the Cabinet of Ministers shall decide on conformity with the Constitution of Ukraine of valid international treaties of Ukraine on these international treaties

Elements of cases

	Criminal case	Civil case
Elements	Intentional violation of the statute	Harm to another person or property (tort) or breach of a contract
Actors	Prosecutor v. Defendant (government) (accused)	Plaintiff v. Defendant (wronged party) (party causing harm)
Punishment	Fines, imprisonment, execution	Defendant may have to pay the plaintiff compensatory punitive damages

Peculiarities of American law system

Full faith and credit

- Federal Constitution requires every state to give

“Full Faith and Credit”

to the

“Acts, records and judicial proceedings of every other state.”

“Checks and balances” (13 states)

system between the powers of the states and the federal government:

- **Balance: 3 branches** of government: legislative, executive, judicial

Check: to avoid ill advised statutes to pass

1. a proposal will not become law unless the president and both houses of Congress approve it.
 2. 2/3 majority in each house is required to override a veto by president.
 3. Congress itself couldn't enforce a statute (executive branch could: the attorney general)
- **Supremacy clause** in the Constitution: where state laws conflict with legitimate federal laws,

Constitutional powers

- States have own **governments and judicial** systems.
- Constitution **may not give** the Congress the power to pass a law.
- Constitution's **Commerce Clause** permits Congress to regulate interstate and foreign commerce as well as most federal regulations.
- Business activity is regulated by the **federal taxing power**

Constitutional Limitations

- **Bill of Rights** (the first 10 amendments to the Constitution) - prohibitions against government regulation: guarantee rights of free speech, freedom of religion, of expression.

Federalism

- the US is composed of 51 different legal systems (a part of the checks and balances system)
- There is a federal legal system and each state has its own system.
- Still: if there is a conflict between the 2 systems, the federal rules prevail.

Sources of law

1. Constitutions
2. Treaties
3. Statutes
4. Administrative rules and decisions
5. Executive orders
6. Court decisions
7. Private law

Constitutions

- The highest source of law
- All forms of law must be consistent with the Constitution
- Each state has Constitution, some are more specific and detailed but subordinate to the US Constitution, though superior to law derived from other sources within the state.
- Some were rewritten several times.
- The US Constitution has 17 amendments (more than 200 years)

Treaties

Constitution:

“Treaties made by the president with foreign governments and ratified by 2/3 of the senate are the supreme law of the land”

Statutes

- is the product of lawmaking of a legislature

Statutes

- add details to the government framework
- Establish rules that govern certain kinds of activity (auto on highway)
- Criminal law
- Law applicable to sales of goods
- Law that limits or regulates business

- Congress and state **enact statutes** at sessions
- People turn to Congress to urge the passage of such a law: economic, moral or health problem.
- **Statutory law** varies from state to state.
though
- The Uniform Commercial Code is adopted by 50 states as a **uniform law**.
- **Laws in business** tend to be uniform.
- **Ordinances** are enactments of governmental units within the states (eg. noise levels)

A government agency

- Congress and state legislatures can delegate lawmaking power to a **government independent** (not part of executive branch) **regulatory agency**
- **Strictly civil**
- **Business** is highly regulated in this way
- **Interstate Commerce Commission** – 1887 (the 1st federal agency)
- Some rules issued by an agency have the same force as statutes passed by Congress (if they are within the authority granted by the statute)

A government agency

creation	Congress passes enabling legislation specifying the powers of the agency
features	Headed by a board or commission Members nominated by president Appointments confirmed by Senate Appointees drawn from the two major political parties
powers	Investigative Rule-making Adjudicatory

Executive orders

- Congress and state legislatures can delegate lawmaking power to the **president or a governor**.
- Franklin D. Roosevelt's **1943 order** required all contracts for war supplies to include a clause prohibiting race discrimination.
- Have the force of a law if they are **within the authority** granted by the statute.

Judicial decisions

- Courts also make laws.

They do it in three ways

Interpretation

(they give meaning
source

and effect to the other
legal dispute)

sources of law)

through the **common law**

(they find law when no

offers a solution to a

judicial review determining the
legitimacy of the actions of other branches of
government

Common law

- It is a **court – created law** (decisional law).
- Arises when there is no source of law to resolve a dispute.

Judicial review

- A judge may render a **legal rule unenforceable** declaring it in conflict with constitution.

Procedural safeguards

- A law must be **knowable, predictable, adjustable** (in changing time).
 1. For people to know the **bills** they are **published**.
 2. The Constitution prohibits **ex post facto laws**. A new statute applies only to actions taken after it became effective.

Stare decisis – a court in making a decision should follow the rulings of prior cases that have similar facts (precedents).

3. **Interpretation** – narrow or broad. Court may **choose facts** to stress or to ignore.

The highest appeal court can **distinguish** or **overrule** (in fact rarely) a precedent case.

Constitution of Ukraine

Constitution of Ukraine

- “The Verkhovna Rada of Ukraine on behalf of the Ukrainian people - Ukrainian citizens of all nationalities, expressing sovereign will of the people standing on the century-old history of Ukrainian state building, on the ground of the right to self-determination realized by the Ukrainian nation, all the Ukrainian people, providing for the guarantee of human rights and freedoms, and of the deserved conditions of human life, providing strengthening of the civil consent on the Ukrainian land, desiring to develop and strengthen a democratic, social, legal state, recognizing the responsibility before God own

Constitution declares

- **Ukraine is a sovereign and independent, democratic, social, legal State.**
- **The sovereignty of Ukraine covers the entirety of its territory.**
- **Ukraine is a Unitarian state.**
- **The territory of Ukraine within the limits of existing borders is indivisible, and inviolable.**
- **An individual, his/her life and health, honor and dignity, inviolability and security are recognized in Ukraine as the highest social value.**
- **Human rights and freedoms and their guarantees determine the essence and the direction of the activity of the State.**
- **The state is responsible to the person for its activity. The establishment and maintaining of human rights and freedoms is the main duty of the State.**

Ukraine is a Unitary
state

- A unitary state is a state governed as one single unit in which the central government is supreme and any administrative divisions exercise only powers that their central government chooses to delegate.

The great majority of states in the world have a unitary system of government.

- Unitary states are contrasted with federal states (federations) and confederal states

The main features of the unitary state

- One main law (normative legal act or set of such acts) for the entire state, which has the rule over the entire territory of the country;
- One highest authority for the whole country;
- One law system;
- Single citizenship;
- Single currency;
- Single national language;
- Components of the unitary state do not have signs of sovereignty.

Unitary states may be centralized and decentralized, depending on:

- **nature** of the relationship between the higher and local authorities;
- **volume of the powers** granted to administrative-territorial units or autonomous entities within the unitary state;

Centralized state: head of the local government bodies are designated from the center.

In decentralized unitary states, local governments are elected by the people and enjoy considerable autonomy in matters of local life

Unitary states are contrasted
with
**federal states (federations) and
confederal states.**

Federation

- **a form of government in which the units of a federal state are public entities, having legally certain political independence.**
- **Constituent parts of the federation - entities called subjects of the federation, and the territory of the Federation consists of the territories of its subjects**

- In a federal state there are **two systems of higher authorities** (federal and subjects of the Federation).
- Along with the **federal constitution** federal subjects have the right to **make their own legal acts** of the constituent character.
- They have the power to make **regional laws**. Subjects of the Federation often have their own **institute of citizenship, capital, coat of arms** or other parts of the constitutional and legal status of the

- The subject of the Federation **can not be the subject of international relations**, if not leaving the federation.
- Subjects of the federation may **have different names**, determined by historical or legal factors: states, provinces, regions, territories and republics, land or federal land.
- Federation should be distinguished from the confederation, which is **an international legal union of sovereign states**.

Features of federal states:

- The territory consists of the territories of its individual actors: states, cantons, republics, and so emirates.
- Supreme legislative, executive and judicial power belongs to the federal government. Relation between the Federation and its subjects is delimited by the federal constitution.
- Some federations subjects make their own constitution, internal supreme legislative, executive and judicial bodies.
- In most federations, there is a single-federal citizenship.
- The main foreign policy is realized by the federal government agencies. They are officially a federal state in international relations (USA, Russia, Germany, Brazil, India and others.).

TASK

- Think and write “+” and “-” of Unitary and Federative State organization.

“+”	“-”

Constitution

- **Ukraine is a republic.**
- **The people are the bearers of the sovereignty and the only source of power in Ukraine. The people exercise power directly and through the bodies of state power and local self-government.**
- **The right to determine and change the constitutional order in Ukraine belongs only to the people and may not be usurped by the state, its bodies or its officials.**
- **No one has the right to usurp state power.**

- **Local self-government** is recognized and **guaranteed** in Ukraine.
- The **principle of rule of law** is recognized and acts in Ukraine.
- Ratification of international **treaties** which **contradict** the Constitution of Ukraine, is possible only after introducing appropriate **changes** to the Constitution of Ukraine.
- The state **language** in Ukraine is the **Ukrainian** language.
- The **free development, use and protection** of **Russian and other languages** of national minorities is **guaranteed** in Ukraine.

- **The state assists in the consolidation and development of the Ukrainian nation, its historical consciousness, traditions and culture, as well as in the development of the ethnic, cultural, linguistic and religious features of all native nations and national minorities of Ukraine.**

The property sets responsibility. The property shall not be used against a person and society.

- **Public life** in Ukraine is based upon principles of political, economic and ideological **diversity**.
- **No ideology** can be considered **mandatory** by the State.
- **Censorship** is **prohibited**.
- The State guarantees **freedom of political activity** not prohibited by the Constitution and laws of Ukraine.

ARTICLE 20

Symbols are the State Flag, the State Emblem and the State Anthem.

The State Anthem of Ukraine is the national anthem with the music of M.Verbytskyi and words, confirmed by law, which shall be adopted by no less than two-thirds of the constitutional membership of the Verkhovna Rada of Ukraine.

The description of the state symbols of Ukraine and the order of their use is determined by law, adopted by no less than two-thirds of the constitutional membership of the Verkhovna Rada of Ukraine.

The capital of Ukraine is the City of Kyiv.

Chapter II

- **All people are free and equal in their dignity and rights which are guaranteed and may not be abolished.**
- **Every person has the right to the free development of personality, as long as there are no violations of the rights and freedoms of other people, and has obligations before society.**
- **Citizens have equal Constitutional rights and freedoms and are equal before the law.**
- **There are no privileges or restrictions based upon race, color of skin, political, religious and other beliefs, gender, ethnic and social origin, property, ownership, position, place of residence, based upon language or other circumstances**

- **Foreigners and persons without any citizenship, who live in Ukraine on a legal basis shall enjoy the same rights and freedoms and have the same duties as citizens of Ukraine except in cases determined by the Constitution, by laws or by international treaties concluded by Ukraine.**

- The form of Ukraine is a **parliamentary republic with elements of a presidential republic**, in the form of a territorial and political unit - a complex unitary state. In Ukraine, there is a **democratic political regime**.

Changing the constitution.

- A bill may be submitted to the **Verkhovna Rada of Ukraine only by president or 1/3 of Verkhovna Rada.**
- It is **considered by the Verkhovna Rada after the Constitutional Court. Change must be approved by parliament twice on different sessions:** by the majority of the Parliament and then by 2/3 of votes.
- Rada may not, during its term of office to change the same provisions of the constitution twice.
- **The Constitution can not be changed in a state of emergency or martial law.**

Constitutional control.

- Sole body of constitutional jurisdiction in Ukraine is the Constitutional Court.

Consists of **18 judges.**

- 6 appoints Verkhovna Rada
- 6 - President and
- 6 - Congress of Judges of Ukraine.
- Judges are appointed for 9 years without reappointment for another term.
- Judge of the Constitutional Court must be a **citizen of Ukraine over 40** years old, has **professional experience at least 10** years, residing in **Ukraine for the past 20** years and **speaks the Ukrainian** language.

President of the Court

- Elected by its members **secretly** and only for **three-year term**.
- Judges are guaranteed **independence and integrity**.
- They **may not belong** to political parties and trade unions, to participate in political activities, have a representative mandate, hold any paid positions, paid work, except for scientific, teaching and creative.

Court

Constitution - Chapter XII

The Court on the appeal of the President, no less than 45 members of the parliament, the Supreme Court of Ukraine, the Ombudsman assesses the constitutionality of:

- laws and other legal acts of the parliament
- acts of the President
- acts of the Cabinet
- officially interprets the Constitution and laws of Ukraine
- on the appeal of the President or the Cabinet, provides opinions on the conformity with the Constitution of international treaties
- on the appeal of the parliament, provides an opinion on the procedure of impeachment of the President
- provides an opinion on introducing amendments to the Constitution with the restrictions imposed by the Constitution.

Task 1

- President of Ukraine appealed to the Ukrainian people of congratulations on Independence Day.
- Take a legal analysis of the facts. Do these actions belong to the circle of the President of Ukraine of its powers? What are the regulations governing the issue?
- Art. 106 of the Constitution: he has the right

TASK 2

- President took the decision to **impose martial law** in the country.
- Parliament has recognized **this illegal decision** and began the procedure of impeachment. Is it lawful actions is the President and Parliament? Under what conditions Parliament can initiate the impeachment of the President?

- «President may be removed by the Verkhovna Rada of Ukraine if he commits treason or other crime."

- Under the terms the of the task the President did not commit a crime, but took the decision to impose martial law - this is not treason;

The procedure of impeachment of the President:

- «Impeachment is initiated by the majority of the Verkhovna Rada of Ukraine"
- «Verkhovna Rada establishes a special temporary investigative commission, made of special prosecutor and investigators."
- «Conclusions and recommendations of the temporary investigative commission shall be considered by the Verkhovna Rada of Ukraine";

- The impeachment adopted by the Verkhovna

Task 3

- People living in the town N gathered in the central square, having informed local authorities about it. Local executive authorities stopped the meeting, citing the fact that the organizers of the meeting didn't get written permission for the meeting. Give the legal analysis to the fact. Justify the legality of actions of the citizens and authorities? What are the regulations governing the issue?
- The right of citizens to assemble peacefully without arms and to hold meetings and demonstrations(Article 39 of the Constitution of Ukraine) is their inalienable and inviolable . The notification must be made by citizens through the organizers of mass gatherings.
- According to the law The authorities have one month for giving the allowance for a meeting, and the meetings that do not require further

Task 4

- Cabinet of Ministers of Ukraine adopted an unconstitutional resolution. Parliament abolished the it. Which body has the right to decide this question?
- Illegal action on the part of public authorities. Violation of Art. 19 of the Constitution of Ukraine "state bodies and local authorities are obliged to act only on the basis and within the limits and in the manner envisaged by the Constitution and laws of Ukraine."
- The Constitutional Court of Ukraine adopts decisions and provides opinions in cases concerning the constitutionality of laws and

Task 5

- Chairman of the Verkhovna Rada of Ukraine read out the oath of the President thus done the inauguration of President within 30 days after the official announcement of the election results at a meeting of the Verkhovna Rada of Ukraine.
- Say if that was right?

- A person N without citizenship, having lived in Ukraine for 5 years, filed an application for citizenship of Ukraine. Together with her 14 years old baby.
- **Conditions for granting the citizenship of Ukraine are:**
 - 1) recognition and respect for the Constitution of Ukraine and laws of Ukraine;
 - 2) the declaration of **absence of citizenship**.
 - 3) continuous **legal residence** in the territory of Ukraine for the past 5 years.
 - 4) **obtaining** an immigration permit.
 - 5) Knowledge of the **state language** or understanding at a level sufficient to communicate.
 - 6) the existence of **legitimate earnings**.