**NATIONAL AVIATION UNIVERSITY**

**EDUCATIONAL AND SCIENTIFIC LEGAL INSTITUTE**

**Department of Criminal Law and Process**

SUPPORTED LECTURING CONCEPT

on discipline

**"Advocacy and notary of Ukraine"**

for second year students

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(scientific degree, academic rank, teacher's name)

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Head of Department\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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Topic 1. History of the emergence and development of the Bar

Plan

1. Advocacy in ancient Greece.

2. The formation and development of an advocate in ancient Rome.

3. Advocacy of the Middle Ages in France, Germany, England.

4. The birth and development of the Institute of Advocacy in Ukraine after 1917.

Guidelines

The most clearly decorated advocacy was in Greece and Rome. Though in Greece I would not have been a special lawyer, but a special stratum of people who were involved in drafting speeches for the proclamation of their plaintiffs in court had already formed.

The beginning of judicial eloquence in Greece dates back to the time of Solon (640-559 BC), the Athenian Archon (the highest official in Ancient Greece), which was considered one of the family of prominent Greek wise men. He introduced the duty of everyone to defend his case in court in person, no replacement was allowed. However, in many cases, compliance with the law of Solon was impossible and then this rule was allowed to violate and allow the representation and replacement of one person to another, for example, persons who did not have enough words, children, women, and also in the protection of public interests. To speak to a rhetorician (the speaker in Ancient Greece and Rome) or to a sophist (a professional speaker, a teacher of eloquence), who was paid a secret fee, was allowed by judges in exceptional cases when the person did not speak the language.

In Rome, as in Greece, the original form was a family lawyer. The next transitional stage in its development was the publication of the laws of XII tables, which made public knowledge of the laws, but their practical application remained in the hands of the patricians. Only publication by the Flavius ​​(V in.), And then by Elias (IVth century.) Of the tables of the receiving days and the appeals formulas caused a final blow on the legal monopoly of the patricians. The study and application of law became accessible to all interested persons, and the lawyer became a free profession.

King Edward I of the Barrister was first called a barrister, pointing out that only all defenders could defend the parties before the court.30 Like in France, lawyers were widely practicing the provision of legal aid in civil matters related to criminal cases, the admission of a lawyer to a so-called formal defense widely used only after 1836

The preparation of candidates for advocacy was not in universities, as in other states, but in the law firm itself.

Questions for self-examination

1. Features of advocacy development in the Soviet period.

2. Evolution of social relations as the basis of the emergence and existence of a lawyer. Advocacy of Greece and Rome.

3. Advocacy and advocacy in the context of the Constitution of Ukraine, the Criminal Procedure Code, the Law of Ukraine "On Advocacy and Advocacy", and other normative and legal documents.

**Topic 2. The concept of the advocacy, its tasks, organizational forms, types and principles of advocacy. Lawyer's self-government**

Plan

1. The concept of the Institute of Advocacy of Ukraine: principles and guarantees of advocacy.

2. Organizational forms and principles of advocacy of Ukraine.

3. The role of the advocacy in ensuring the rights and freedoms of man and citizen.

4. Types of advocacy.

5. Lawyer's self-government.

Guidelines

1.According to Art. Article 8 of the Constitution of Ukraine recognizes and applies the rule of law. Since the laws must comply with the Constitution, and its norms are rules of direct action, the principle of the rule of law should be considered the principle of the activity of the advocacy.

2. The principle of independence is fundamental in the work of the advocacy, because it fulfills the professional powers of lawyers, aimed at protecting human rights and freedoms, ensuring the constitutional right of everyone to legal assistance.

3. The principle of confidentiality is one of the most important principles that has a decisive influence on the profession of lawyer, on the relationship between the client and the lawyer and lawyer with other individuals and legal entities.

1. Professional rights, honor and dignity of a lawyer are guaranteed and protected by the Constitution of Ukraine, Law “About the Bar and   advocacy activities” and other laws, in particular:

1) any interference and obstacles to the practice of advocacy are prohibited;

2) it is prohibited to require a lawyer, his assistant, intern, a person who is in labor relations with a lawyer, a lawyer's office, a lawyer's association, as well as from a person in respect of which the right to engage in advocacy has been suspended or suspended, the provision of information that is an advocate's secret. On these issues, the said persons can not be questioned, except if the person who entrusted the relevant information has freed these persons from the obligation to keep the secrets in accordance with the procedure prescribed by law;

3) the conduct of a lawyer for operational-search activities or investigative actions that can be carried out solely with the permission of the court is carried out on the basis of a court decision approved at the request of the Prosecutor General of Ukraine, his deputies, the prosecutor of the Autonomous Republic of Crimea, the oblast, the city of Kyiv and the city of Sevastopol;

4) it is prohibited to conduct inspection, disclosure, reclamation or removal of documents related to the exercise of advocacy;

5) the lawyer is guaranteed equality of rights with other participants in the proceedings, adherence to the principles of competition and freedom to provide evidence and prove their credibility

and many others.

2. In the case of a search or review of housing, other possession of a lawyer, premises where he carries out advocacy, temporary access to things and documents of a lawyer, an investigating judge, the court in its decision shall obligatory specify the list of things, documents to be found, to identify or removed during the investigation or application of the criminal proceedings, and also takes into account the requirements of paragraphs 2 to 4 of part one of this article.

In the course of a search or review of housing, other possession of a lawyer, premises where he is engaged in advocacy, temporary access to things and documents of a lawyer, a representative of the council of advocates of the region must be present.

The National Association of Advocates of Ukraine is a non-governmental nonprofit professional organization that unites all lawyers of Ukraine and is formed in order to ensure the implementation of the tasks of the lawyer's self-government.

The highest body of lawyer's self-government in the Autonomous Republic of Crimea, oblasts, cities of Kyiv and Sevastopol is a conference of lawyers of the region, whose address is located in the respective territory.

The conference of advocates of the region is convened by the council of advocates of the region at least once a year.

Council of advocates of the region

In the period between the conferences of the lawyers of the region, the functions of the lawyer's self-government in the region is carried out by a council of advocates of the region.

The qualification-disciplinary commission of the advocacy is formed with the purpose of determining the level of professional preparedness of persons who have indicated their intention to obtain the right to practice lawyers, and to resolve issues related to disciplinary liability of lawyers.

The Qualification-Disciplinary Commission of the Bar is under the control and accountable to the conference of lawyers of the region.

The Qualification-Disciplinary Commission of Advocacy acts as a member of the qualification and disciplinary chambers. The qualification chamber consists of no more than nine members, disciplinary - no more than eleven members of the Chamber.

The highest body of advocacy self-government in Ukraine is the Congress of Advocates of Ukraine.

The congress of lawyers of Ukraine includes delegates elected by conference of regional advocates by voting by a relative majority of the votes of delegates participating in the conference.

The Congress of Advocates of Ukraine is convened by the Council of Advocates of Ukraine at least once every three years.

In the period between the congresses of lawyers of Ukraine, the functions of lawyer's self-government are performed by the Council of Advocates of Ukraine.

The Council of Advocates of Ukraine is controlled and accountable to the Congress of Advocates of Ukraine.

**Questions for self-examination**

**1. Describe the principles of advocacy.**

**2. Give the definition of the "Institute of Advocacy of Ukraine".**

**3. List the guarantees of advocacy.**

**4. Principal types of advocacy.**

**5. Describe the process of becoming a lawyer.**

**6. Determine the role of the advocacy in the functioning of the rule of law.**

**7. Formation of the lawyer's corps under the current legislation of Ukraine.**

**Topic 3. Law ethics**

**Plan**

**1. The concept and content of advocacy ethics.**

**2. Morality and morality, their relationship with lawyer ethics.**

**3. The rules and principles of lawyer's ethics.**

**4. The ethics of the lawyer's behavior.**

**5. The ethical rules of the relationship "lawyer-client" and "lawyer-colleague".**

**6. Relations between the lawyer and the court, representatives of the investigation authorities and the prosecutor's office, other bodies and individuals in the exercise of their professional activities in accordance with the rules of the advocacy ethics.Guidelines**

Article 59 of the Ukrainian Constitution declares that the most important social function of the Bar is to secure the right to defense against accusations and to the legal assistance in proceedings in a court of law and other state authorities. The role of a single independent professional defense institution designed to defend rights and freedoms and represent legal interests of an individual before state authorities, based on the principles of rule of law, independence, democracy, humanism and confidentiality enshrined in the Law of Ukraine 'On the Bar', is performed by the Bar in a system of complex legal relations. In his professional activities, an advocate has sometimes contradicting responsibilities before the following: clients; courts of law and other state authorities; the Bar on the whole and individual advocates; and society on the whole. The critical importance of the Bar's functions requires that advocates should follow high ethical standards of conduct; at the same time the specific and comprehensive nature of responsibilities assumed by the Bar calls for balancing the advocate's concern with the interests of an individual client and the interests of the society on the whole, observation of the principles of legality and rule of law. In order to successfully achieve the goal of self-regulation of advocates' professional conduct at that high level, characterized by a complex interplay of advocate's various responsibilities, their priorities and actual implementation in situations, where such responsibilities conflict, and to find such a way of their implementation, which will best correspond to the Bar's mission and status, rules of advocate's professional ethics must be established to be the advocate's guidelines in choosing proper options of professional conduct. Developing special deontological requirements and rules within the Bar and advocate's compliance with these requirements and rules is viewed by the advocates' community as a necessary and fundamental precondition of proper function of the Bar and performance of its important social role in a democratic society. The Law of Ukraine 'On the Bar' prescribes compliance with the rules of advocate's ethics as one of the basic responsibilities assumed by an advocate in his Oath of the Ukrainian Advocate. Considering the above, these Rules were developed with a view to establishing unified traditions and experience of the Ukrainian Bar in the light of interpretation of advocate's ethics and general deontological rules and standards accepted in international advocates' community. The Rules are designed to serve as a system of guidelines for Ukrainian lawyers, providing for a balanced and practical coordination of their numerous professional rights and responsibilities in accordance with the status, main objectives and principles of the Bar, which are defined by the Ukrainian Constitution, the Law of Ukraine 'On the Bar' and other Ukrainian legislation, and they also should secure a single system of criteria for evaluation of ethical aspects of advocate's conduct in disciplinary proceedings undertaken by the qualification and disciplinary commissions of the Bar, when complaints are lodged against advocate's actions that breach the advocate's oath through violation of the rules of advocate's ethics. CHAPTER I GENERAL PROVISIONS Article 1 Relationship Between the Rules of Advocate's Ethics and Current Legislation on the Bar Provisions of the present Code do not revoke nor do they supersede the provisions of legislation in force on the Bar, but they supplement and specify them. Article 2 The Scope of the Rules of Advocate's Ethics with Regard to the Object Matter, Persons Concerned and Time (1) These Rules shall extend to all types of an advocate's professional activity as well as, in its relevant part, to his other activities (actions) which may come into conflict with his professional responsibilities or undermine the prestige of the legal profession. (2) These Rules shall extend to members of bodies of the Bar and assistant advocates in the part which can relate to their activity. (3) These Rules shall extend to relations arising after its adoption. Article3 Interpretation of the Rules The right of official interpretation of these Rules belongs exclusively to the High Qualification Commission of the Bar established under the Cabinet of Ministers of Ukraine. Article 4 Definitions The terms applied in these Rules shall have the following meaning: Client a person whose rights and freedoms are protected by an advocate or whose legitimate interests he represents, or to whom he directly renders legal assistance in other forms foreseen under legislation in force. Contract - an agreement in which one party - an individually practicing advocate or a unit of advocates undertakes the assignment of another party - the client (or his representative) on providing the client legal assistance of a type agreed upon by them in the interests of the client on terms foreseen under the agreement, while the other party (the client or his representative) undertakes to pay a fee for the advocate's actions (Option: activity) on rendering legal assistance and, when need be, the actual expenses related to the handling of a case. The agreement can also provide for other terms of rendering legal assistance. Fee - remuneration for the performance by an advocate of work on rendering legal assistance as provided for by a contract to this effect; the fee does not include the funds contributed by the client (his representative) for covering the actual expenses related to the performance of the agreement. Court - any body representing the judiciary in conformity with legislation in force. Other bodies - any bodies of the legislature or the executive, bodies of the procurator's office, local self-government, management bodies of institutions, organizations, enterprises and their associations. governing bodies of citizens' associations. Other persons - any legal entities, citizens, stateless persons. CHAPTER II BASIC PRINCIPLES OF ADVOCATE'S ETHICS Article 5 Independence (1) As a necessary condition for the proper pursuance of an advocate's activities, the specific nature of the aims and purposes of advocacy requires a maximum independence of the advocate in exercising his professional rights and duties, which implies his freedom from any external pressure and interference in his activity, by state bodies included, as well as from the influence of his personal interests. (2) In order to observe the given principle in his professional activity, an advocate shall be bound to resist any attempts of infringement upon his independence, be courageous and principled in the performance of his professional duties, and in asserting his rights and their effective exercise for the benefit of clients. (3) In his activity, an advocate shall be bound to avoid compromises infringing upon his independence in order to please the court, other authorities, third parties or the client, if such compromises are at variance with the legitimate interests of the client and hinder in properly rendering him legal assistance. (4) An advocate may not engage in any activity, public activity included, which might put him in a position of legal, material or moral dependence on other persons, and of submission to the instructions or rules, which might come into conflict with the provisions of legislation in force on advocacy and the rules of these Rules, or by any other means hinder the free and independent performance of his professional duties. (5) An advocate may not share his fees received from a client with other persons except for the heirs of a deceased advocate whose partially performed assignment he accepted or an advocate who performed this assignment before. (6) While performing the assignment of the client, an advocate may not be guided by the instructions of third parties in relation to the substance of forms, methods, sequence and time of exercising his professional rights and duties, if they contradict his own understanding of the optimal variant of performing the assignment.

**Questions for self-examination**

**1. The concept of lawyer's ethics.**

**2. Name the principles of advocacy ethics.**

**3. Describe the ethical rules of the relationship "lawyer-client" and "lawyer-colleague".**

**4. Describe the attorney's relationship with the court, representatives of the investigation authorities and the prosecutor's office, other bodies and individuals in the exercise of their professional activities in accordance with the rules of the advocacy ethics.**

**Theme 4. Implementation by defense and representation attorneys in various forms of legal proceedings.**

**Plan**

**1. Constitutional right of citizens to legal aid, the choice of the protector of their rights: discussion issues.**

**2. Obligatory participation of the defender.**

**3. Procedure for the invitation and appointment of a counsel.**

**4. Refusal from the defender, his replacement.**

**5. Obligations and rights of the lawyer.**

**6. Defender's legal position.**

**7. Advocacy work of a lawyer**

**Guidelines**

A defender is a lawyer who protects a suspect, accused, convicted, acquitted, a person for whom the use of compulsory measures of a medical or educational nature is foreseen, or the issue of their application was decided, as well as a person in respect of which the consideration of the issue of extradition to a foreign state is envisaged .

A lawyer whose information is not included in the Uniform Register of Advocates of Ukraine or in respect of which the Uniform Register of Advocates of Ukraine contains information on the suspension or termination of the right to engage in advocacy is not a defender.

1. The defender shall not have the right to assert the protection of another person or to provide legal assistance to him if this is contrary to the interests of the person to whom he provides or previously provided legal assistance.

2. Failure of the defense counsel to take part in a certain procedural action if the defense counsel was warned in advance about his conduct, and provided that the suspect, the accused does not object to the conduct of proceedings in the absence of a lawyer, can not be the basis for the recognition of this procedural act illegal, except when the defense counsel's participation is compulsory.

 If the suspect, the accused denies the conduct of a procedural act in the absence of a lawyer, the conduct of procedural action is postponed or a defense counsel is involved in its conduct in the manner prescribed by Article 53 of this Code.

 3. At the same time, no more than five defendants of one accused may participate in the trial.

4. The defender shall enjoy the procedural rights of the suspect, the accused, whose protection he carries out, in addition to procedural rights, the realization of which is carried out directly by the suspect, the accused and can not be entrusted to the counsel, from the moment of submission of the documents provided for in Article 50 of this Code, the investigator, the prosecutor, the investigating judge , court.

5. The defender has the right to participate in the conduct of interrogation and other procedural actions conducted with the participation of the suspect, the accused, before the first interrogation of the suspect to have a confidential appointment with him without the permission of the investigator, prosecutor, court, and after the first interrogation - the same visit without limitation quantity and duration. Such meetings may take place under the visual control of an authorized official, but in circumstances that exclude listening or eavesdropping.

6. Documents related to the performance of a defender of his duties, without his consent, shall not be subject to review, seizure or disclosure by the investigator, prosecutor, investigating magistrate, court.

 7. Bodies of state power and bodies of local self-government, their officials must comply with the lawful requirements of the counsel.

The defender may at any time be involved with the suspect, accused, their legal representatives, as well as other persons at the request or consent of the suspect, accused of participating in criminal proceedings. Investigator, prosecutor, investigating judge, court are obliged to provide the detained person or the person in custody with assistance in establishing contact with the counsel or persons who may request a defense counsel, and to provide the opportunity to use communications to invite counsel . An investigator, a prosecutor, an investigating judge, and a court are required to refrain from making recommendations on the involvement of a particular lawyer.

 The defender is involved by an investigator, a prosecutor, an investigating judge or a court for the purpose of protection in the cases and in the manner prescribed by Articles 49 and 53 of this Code. 1. Preparation for consultation:

- to summarize all known facts, circumstances of the case, obtained during the interview;

- to select information which is legal and is necessary for work;

- to check and clarify the actual contents of legal norms in order to choose only those that regulate the legal relations arising from the actual circumstances of the case and the requirements of the client;

- Identify possible procedures regarding the client's situation;

- calculate possible material costs and time expenditures;

- evaluate possible solutions and their consequences;

- Determine: where, when, in what form (in person, in writing, by telephone) to conduct a client consultation.

2. Meeting with the client and explaining to him the procedure for consulting.

3. Bringing to the client possible solutions to the problem:

- clarity and clarity;

- outlining all possible solutions to the problem and forecasting the consequences;

- explanation of ways of realization of each variant of the solution of the problem, the role in this client, the nature and size of possible costs;

- Assisting the client in choosing the best solution.

4. Determination of the strategy and tactics of implementation of the decision.

**Questions for self-examination**

**1. List cases where the participation of a defender is mandatory.**

**2. The procedure for inviting and appointing a counsel.**

**3. Obligations and rights of the lawyer.**

**4. Defender's legal position.**

**5. The behavior of the lawyer when he arrives to law enforcement agencies to protect the person.**

**6. The purpose of the consultation.**

**7. The basic requirements for a lawyer-consultant.**

**Topic 5. Notary activity in Ukraine. The notion, task and function of notarial law**

**Plan**

**1. History of the emergence and formation of a notary as a legal institution.**

**2. Concepts, features, functions and principles of notarial activity in Ukraine.**

**3. Sources of notarial law.**

**Guidelines**

The emergence of a notary in the period of antiquity and early Middle Ages leads to the conclusion that it is closely linked with social structure, family, hereditary and substantive law. An essential prerequisite for the emergence and development of a notary was the availability of writing and developed commodity-money relations.

 First, the notary emerged as a kind of administrative activity in the 2nd millennium BC in Babylon (King Hamraupi issued a code that made him famous). In Egypt, in Judea there were clerical clerks who held numerous profitable and costly books, periodically compiled a cadastre of all lands in the country, rewrote the population and its property. Approximately from the middle of the 2nd millennium BC about books and state written acts are already mentioned as a habitual phenomenon.

As long as Ukraine was part of the Russian Empire, the development of the notarial legislation and case management of the latter determined the relevant processes in Ukraine. By a regulation approved on April 14, 1866, a notary was separated from the jurisdiction of courts for the execution of acts and other non-judicial actions. In cities, the offices of notaries were appointed, appointed by the chairman of the court chamber on the basis of a competition from among officials.

 After the October Revolution, the scope of the powers of the notary narrowed, he became public. In 1921, 1923 and 1928 several non-legislative acts were passed in Ukraine that regulated the activities of the state notary public. On December 25, 1974, the Verkhovna Rada of the Ukrainian SSR for the first time in the history of Ukraine adopted the highest act of state power, which regulated the activities of notarial bodies - the Law of the USSR "On State Notary" (enacted on May 1, 1975). This Law expanded the range of notarial acts to more than 20 different types. However, the notary remained a small appendage of the country's legal system. The main type of his activity (more than 70% of notarial acts) was the certification of copies of documents.

 A new impetus to the development of the legal system of Ukraine, including the Notary Institute, was the proclamation of Ukraine's independence on August 24, 1991. With the transition of society to market relations, the legislative recognition of the equality of all forms of ownership, the development of entrepreneurial activity and the privatization processes, there was a public need for the introduction of a private notary institution and, accordingly, legislative consolidation of provisions that would allow the possibility of resolving the issue of notarial activities without the help of state bodies. A significant step in the development of the notary and its legislative consolidation was adopted by the Verkhovna Rada of Ukraine on September 2, 1993, the Law of Ukraine "On Notary" was introduced on January 1, 1994.

Concepts, features, functions and principles of notarial activity in Ukraine. Sources of notary law.

A notary in Ukraine is a system of bodies and officials entrusted with the obligation to certify rights, as well as facts of legal significance, and perform other notarial acts provided for by this Law in order to provide them with legal certainty.

Notarial activities are aimed at providing official power, the probability of legal rights, facts and documents. The activities of the notary have a certain commonality with the activities of other bodies of civil jurisdiction.

          The notary carries out the following tasks:

- protection and protection of property, rights and legitimate interests of individuals and legal entities. Notary bodies generally perform a law enforcement function, but notarial activities can be a means of protecting rights, for example, in the case of execution of executive inscriptions, protests of bills;

- ensuring protection and protection of important rights and interests of citizens and organizations related to their existence, existence;

- Prevention of an offense, which is carried out, in particular, also through legal consultations, clarification of the consequences of notarial acts, refusal to perform a notarial act, if it is contrary to law.

The bodies of the notary carry out only the inherent functions of them:

1. Ensuring the indisputable and evidentiary power of documents coming from the notary;

2. Ensuring legality in the certification of transactions, control function. The notary verifies the presence of the necessary composition of legal facts, including legal capacity and capacity of the parties, the affiliation of their subjective rights that they transfer to others and others;

3. Provision of legal assistance to persons who have applied for the commission of notarial acts.

          The commission of notarial acts in Ukraine relies on notaries who work in state notary offices, state notary publics (state notaries) or are engaged in private notarial activities (private notaries). Documents drawn up by public and private notaries have the same legal validity.

       Principles of notarial activity are: the principle of legality (Article 5, 44, 49, 50, 51, 54 of the Law of Ukraine "On Notary"), the principle of validity of notarial acts (Article 9, 44, 54 of the Law of Ukraine "On Notary"), the principle of promotion of citizens and organizations in the exercise of their rights and legitimate interests (Article 4, 5 of the Law of Ukraine "On Notary"), the principle of the language of notarial proceedings (Article 15 of the Law of Ukraine "On Notary") and the principle of notarial secrecy (Article 8 of the Law of Ukraine "On Notary"). .

Sources of notarial law are normative acts regulating the organization and state regulation of notarial bodies, the issue of controlling the activities of state and private notaries, the operation of registers in the notary system, and the procedural procedure for the performance of notarial acts.

The source of notarial law is the Constitution of Ukraine, which consolidates a number of important general provisions of fundamental importance for the activities of notarial bodies.

The main provisions of the activities of notarial bodies and officials who carry out notarial acts are regulated by the Law of Ukraine "On Notary", which was adopted by the Verkhovna Rada of Ukraine on September 2, 1993 and entered into force on January 1, 1994, as well as a number of subordinate normative legal acts, which are accepted for implementation and development of separate provisions of the Law of Ukraine "On Notary". The norms of substantive law of notarial legislation are enshrined in the Civil, Land, Family, Commercial, and other codes and laws of Ukraine.

Sources: [1-12].

Questions for self-examination

1. The legal basis for the activities of the notary in Ukraine.

2. The notion of a notary, its tasks and functions.

3. Principles of notarial activity.

4. Sources of notarial law.

**Topic 6. Notary as the main subject of notarial relations. System and competence of notarial bodies.**

**Plan**

**1. Requirements for the office of the notary.**

**2. Organization and activities of the High Qualifications Commission of the notary.**

**3. The procedure for issuing a certificate of the right to engage in notarial activities.**

**4. Grounds for cancellation of the certificate of the right to engage in notarial activities.**

**5. Oath of the notary.**

**6. Rights and duties of the notary.**

**7. The system of notarial bodies and officials obliged to perform notarial acts.**

**8. Organization of work of state notary offices.**

**9. Activities of state notary archives.**

**10. Organizational issues of private notary activities.**

**11. Organization of work of officials of local self-government bodies, which are obliged to perform notarial acts.**

**12. The work of consular offices and diplomatic missions for the commission of notarial acts.**

**13. The role of the justice bodies in regulating the activities of the notary.**

**14. The notion of competence of notary bodies.**

**15. Concept and meaning of subject and territorial competence.**

**16. Exception to the general rule of territorial competence.**

**Guidelines**

In studying the issues of this topic, it is necessary to pay attention to the definition of a notary public as a person authorized by the state for the performance of notarial activities, the procedure for access to the profession of notary and its documentary registration, as well as the grounds and procedure for canceling the certificate of the right to engage in notarial activities. The authority of the High Qualifications Commission of the notary, the procedure for its formation, as well as the rights and duties of the notary are the subject of consideration of this topic.

  Notary is a natural person authorized by the state who carries out notarial activity in a state notary office, a state notary public, or an independent professional notarial activity, in particular certifies rights, as well as facts of legal significance, and performs other notarial acts stipulated by law, for the purpose giving them legal certainty, as well as performing the functions of the state registrar of rights to real estate in the manner and in cases established by the Law of Ukraine "On State Registration of Substances Rights to Real Estate and Their Encumbrances ".

        A notary may be a citizen of Ukraine who has a full higher legal education, has a state language, has at least six years of experience in the field of law, of which an assistant to a notary or a consultant of a state notary office - not less than three years, passed a qualifying examination and received certificate of the right to

engaging in notarial activities. A notary may not be a person who has a conviction, is limited in capacity or declared incompetent by a court decision.

        A notary is prohibited from using his or her authority to obtain an unlawful benefit or to accept a promise or offer of such benefit to himself or other persons.

   A notary can not engage in entrepreneurial, advocacy, be the founder of lawyer associations, be in the civil service or service in local self-government bodies, in the state of other legal entities, and also perform other paid

work, in addition to teaching, scientific and creative activity.

    Notary has the right:

 To request information from enterprises, institutions and organizations

and the documents necessary for the performance of notarial acts;

     receive a fee for the provision of additional legal and technical services that are not related to the performers

notarial acts, as well as for the commission of private notaries of notarial acts;

 To draft agreements and applications, to make copies of documents and extracts from them, as well as to clarify the issues of notarial acts and consultations of a legal nature.

        The notary is obliged:

 carry out their professional duties in accordance with this Law and take an oath, adhere to the rules of professional ethics to facilitate citizens, enterprises, institutions and organizations in the exercise of their rights and the protection of legitimate interests, to explain the rights and obligations, to warn about the consequences of the performed notary actions to ensure that legal unawareness can not be used to the detriment of them;

 keep confidential information obtained from him in connection with the commission of notarial acts;

 to refuse to perform a notarial act in case of its non-compliance with the legislation of Ukraine or international treaties;

 to conduct notarial records and archive of the notary in accordance with the established rules; treat the notarial records and the notary's archive with care, not to allow them to be damaged or destroyed;

- provide documents, information and explanations at the request of the Ministry of Justice of Ukraine, the Main Department of Justice of the Ministry of Justice of Ukraine in the Autonomous Republic of Crimea, the main departments of justice in the oblasts, cities of Kyiv and Sevastopol, in exercising their powers of control over the organization of activities and the execution of notaries public notarial rules office work.

To determine the level of professional preparedness of persons who intend to

to engage in notarial activity, and the decision of the issue of cancellation of the certificate on the right to engage in notarial activities under the Ministry of Justice of Ukraine is formed by the High Qualifications Commission of the notary. The personal composition of the High Qualifications Commission of the notary is approved by the order of the Ministry of Justice of Ukraine.

        The term of authority of the personal membership of the High Qualifications Commission to the notary is three years from the day of its approval.

        The Regulation on the High Qualifications Commission of the notary was approved by the decision of the Cabinet of Ministers of Ukraine dated August 31, 2011 No. 923.

        In the case of work experience specified in part two of Article 3 of this Law, persons who intend to pass a qualification examination for the right to engage in notarial activities are allowed by the High Qualifications Commission of the notary prior to its drawing up on the basis of submission of the relevant Main Department of Justice of the Ministry of Justice of Ukraine in the Autonomous Republic Crimea, the main departments of justice in oblasts, cities of Kyiv and Sevastopol.

          The procedure for admitting qualification examinations and their conducting is set by the Ministry of Justice of Ukraine.

         On the basis of the results of the completed examinations, the High Qualifications Commission of the notary decides on issuance (or refusal to issue) the Ministry of Justice of Ukraine certificates of the right to engage in notarial activities.

        The certificate of the right to engage in notarial activities is issued by the Ministry of Justice of Ukraine on the basis of a decision of the High Qualifications Commission of the notary. A refusal to issue a certificate may be appealed to the court. For the issuance of a certificate of the right to engage in notarial activities, a fee, the amount of which is set by the Cabinet of Ministers of Ukraine, is introduced.

       The grounds and procedure for annulling the certificate on the right to engage in notarial activities are determined by Article 12 of the Law of Ukraine "On Notary" and the Procedure for Submitting Submissions to the Chief Justice Offices of the Ministry of Justice of Ukraine in the Autonomous Republic of Crimea, the Main Departments of Justice in the oblasts, cities of Kyiv and Sevastopol or the Notary Chamber of Ukraine cancellation of the certificate of the right to engage in notarial activity and its consideration by the High Qualifications Commission of the notary, approved by the order of the Ministry of Justice of Ukraine Eid July 28, 2011 number 1904/5.

       Certificate of the right to engage in notarial activity, issued on the basis of the Procedure for issuing a certificate of the right to engage in notarial activities, approved by the order of the Ministry of Justice of Ukraine dated July 11, 2012, No. 1043/5, provides the grounds for being transferred to a post to a state notary public office or a state notary public archive or register private notarial activities. The person who is first granted the right to engage in notarial activities, in an appropriate chief notary department of justice, in a solemn atmosphere brings an oath, the content of which is set forth in Article 6 of the Law of Ukraine "On Notary".

The system of notarial bodies and officials obliged to perform notarial acts includes state notaries who work in state notary offices and state notaries' offices, private notaries, local government officials, as well as consular offices and diplomatic missions.

           State notary offices are created and liquidated by the Ministry of Justice of Ukraine. States of state notary offices are approved by the Main Department of Justice of the Ministry of Justice of Ukraine in the Autonomous Republic of Crimea, the main departments of justice in the oblasts, cities of Kyiv and Sevastopol within the limits established for state notary offices and wages.

The state notary office is a legal entity, which is created and registered in accordance with the procedure established by law.

The head of the state notary's office is the head who is appointed from the number of persons who have a certificate of the right to engage in notarial activities.

        Appointment to the post of a state notary and head of the state notary office and dismissal is carried out by the Main Department of Justice of the Ministry of Justice of Ukraine in the Autonomous Republic of Crimea, the main departments of justice in oblasts, cities of Kyiv and Sevastopol.

       State notary archives, which form an integral part of the National Archival Fond, are established in oblast centers, cities of Kyiv, Simferopol and Sevastopol, and provide temporary (up to 75 years) storage of notarial documents. Issues of the organization of activity and competence of the state notary archives are determined by the Provision on it, which is approved by the Ministry of Justice of Ukraine. The network and state of state notary archives are approved in accordance with the procedure provided for the state notary offices. State notary archives are legal independent.

 The office (office) of a private notary must be located within the limits determined by the notary's district. Requirements for the workplace (offices) of a private notary are set by the Ministry of Justice of Ukraine. The application for registration of private notarial activities shall be accompanied by:

 a certificate of the right to engage in notarial activity and a certified copy thereof;

 a document confirming the right of ownership or the right to lease premises for the location of the workplace (office) of a private notary, or a contract of cooperation with another private notary,

 which provides the applicant with the relevant premises, and a certified copy thereof;

 two photographs in the size of 3x4 cm;

 passport of a citizen of Ukraine, which is served personally.

   The registration certificate is issued by the Main Department of Justice of the Ministry of Justice of Ukraine in the Autonomous Republic of Crimea, the main departments of justice in the oblasts, cities of Kyiv and Sevastopol within seven days from the submission of the application. The refusal to register private notarial activity is allowed in the event that the submitted documents do not meet the established requirements, as well as on the grounds stipulated by paragraph one of Article 8-1 of the Article 30 of the Law of Ukraine "On Notary". About the issuance of the registration certificate The Main Department of Justice of the Ministry of Justice of Ukraine in the Autonomous Republic of Crimea, the main department of justice in the oblasts, cities of Kyiv and Sevastopol, inform the bodies of incomes and fees at the place of permanent residence of the private notary.

       The registration certificate shall indicate the notary district and the address of the workplace (office) of the private notary. A private notary must start notarial activity within 30 working days after the issuance of the registration certificate.

       In the event that the notary does not start work within the established term without grave for the reasons, the registration certificate is canceled by order of the Main Department of Justice of the Ministry of Justice of Ukraine in the Autonomous Republic of Crimea, the main departments of justice in the oblasts, cities of Kyiv and Sevastopol.

       Private notary has the right to have an office, to conclude civil and labor contracts, to open current and deposit (deposit) accounts in banks.

       The time of admission of citizens by a private notary must be not less than five hours a day and five working days a week, except for circumstances in which the notary from the reasons independent of him can not make such a reception.

       The private office (office) of the private notary must be within the notary's district, where the private notary carries out notarial activities.

A private notary may perform notarial activities only if there is an act of certification of a workplace (office) of a private notary or a court decision which has become valid, which has been declared illegal by the act of refusal to certify the workplace (office) of a private notary. A private notary is obliged to inform the Main Department of Justice of the Ministry of Justice of Ukraine in the Autonomous Republic of Crimea, the main department of justice in the oblasts, cities of Kyiv and Sevastopol, about changing the address of the workplace (office).

      The damage caused to a person as a result of illegal actions or negligence of a private notary is fully refunded.

In rural settlements, authorized officials of the local self-government body perform such notarial acts:

1) take measures for the protection of ancestral property;

     2) certify the wills (except for the secret ones);

     3) issue duplicates of documents certified by them;

     4) certify the fidelity of copies (photocopies) of documents and

extracts from them;

5) certify the authenticity of the signature on the documents;

6) Issue certificates of the right to inheritance.

 The said officials of local self-government bodies are not entitled to issue documents intended for use outside the state border.

        Consular offices of Ukraine carry out such notarial acts:

     1) certify the agreements (contracts, wills, powers of attorney, etc.);

except for mortgage agreements, agreements on alienation and mortgages of residential buildings, apartments, summer residences, garden houses, garages, land plots, other real estate located in Ukraine;

     2) take measures to protect hereditary property;

     3) issue certificates of the right to inheritance;

     4) issue certificates of ownership of a share in

the joint property of the spouses in the event of the death of one of the spouses;

     5) certify the authenticity of copies of documents and extracts from them;

     6) certify the authenticity of the signature on the documents;

     7) certify the correctness of translation of documents from one language into

another;

     8) certify the fact that the citizen is alive;

     9) certify the fact of finding a citizen in a certain place;

     10) certify the identity of the citizen with the person depicted on the photo;

     11) certify the time when documents are presented;

     12) accept money and securities in deposit;

     13) execute executive inscriptions;

     14) accept documents;

     15) carry out marine protests;

issue duplicates of documents certified by them.

     Legislation of Ukraine may stipulate other actions taken by the consular institutions of Ukraine.

Sources: [1-12].

**Questions for self-examination**

**1. Procedure for access to the profession of notary.**

**2. Competence of the High Qualifications Commission of the notary.**

**3. The procedure for issuing a certificate of the right to engage in notarial activities. Rights and duties of the notary**

**4. Grounds and procedure for cancellation of the certificate on the right to engage in notarial activities.**

**5. Rights and duties of the notary.**

**6. Oath of the notary, its content and meaning.**

**7. Legal status of state notary offices and state notary archives.**

**8. Procedure for the appointment and dismissal of state notaries.**

**9. Workplace certification as the basis for the registration of private notarial activities.**

**10. Requirements for the work of a private notary.**

**11. Registration of private notarial activities. Registration certificate.**

**12. Responsibility of the state and private notary. Insurance of civil liability of a private notary.**

**13. Subject and territorial competence of bodies and officials who perform notarial acts.**

**Theme 7. General rules for the commission of notarial acts**

**Plan**

**1. Features of the notarial process, its content and stage.**

**2. The notion of notarial acts and the general rules of its commission.**

**3. Place and terms of notarial acts.**

**4. The procedure for establishing the identity of a citizen who applied for a notarial act. Verification of citizens 'legal capacity and legal capacity of legal entities involved in transactions, as well as verification of representatives' credentials.**

**5. Signing of notarially certified documents.**

**6. Recovery of the information and documents necessary for the commission of notarial acts.**

**7. Grounds for refusal to perform notarial acts and procedural procedure for refusal to perform notarial acts.**

**8. Appeal against the actions of the notary and refusal to perform notarial acts.**

**9. The notion and types of notarial acts.**

**10. Formation, registration and registration of notarial documents.**

**11. Procedure for collecting state duty. Grounds for exemption from payment of state duty.**

**Guidelines**

Notarial process is a set of actions which should be performed by a notary on the results of treatment of another subject of notarial legal relations.

      The notarial process takes place in the following stages:

1) opening of notarial proceedings;

2) preparation for the commission of a notarial proceeding;

3) direct commission of a notarial act, which ends with a certificate of a notarial deed and its issue.

According to Art. 41 of the Law, notarial acts may be committed by any notary or an official of a local government body. However, some of them may be committed only by a notary whose jurisdiction extends to a certain notary district (Articles 55, 60, 65, 66, 70-73, 85, 93, 103 of the Law of Ukraine "On Notary").

A notary or an official who carries out notarial acts, refuses to perform a notarial act if:

    1) the commission of such an action contravenes the legislation of Ukraine;

     2) no information (information) and documents necessary for the performance of a notarial act are submitted;

     3) the action is subject to commission by another notary or an official who carries out notarial acts;

    4) there is a doubt that an individual who applied for a notarial act, realizes the meaning, content, legal consequences of this action, or that person acts under the influence of violence;

     5) a person who, in accordance with the established procedure, has been declared incapable or the authorized representative does not have the necessary powers, applied for a notarial act;

     6) a transaction entered into on behalf of a legal entity is in conflict with the objectives specified in their statute or regulation or goes beyond the scope of their activities;

     7) the person who requested the commission of a notarial act did not pay a fee for her commission;

     8) the person who applied for a notarial act did not make payments established by the legislation related to its commission;

     9) in other cases stipulated by law.

     A notary or official performing notarial acts does not accept documents for notarial acts if they do not meet the requirements set forth in Article 47 of the Law or contain the information stipulated by part three of Article 47 of the Law.

     A notary or an official who performs notarial acts shall be prohibited from refusing to perform a notarial act groundlessly.

At the request of a person who has been denied a notarial act, a notary or an official who carries out notarial acts shall be obliged to state the reasons for the refusal in writing and explain the procedure for its appeal. A notary shall, within three working days, make a corresponding decision regarding the refusal to perform the notarial act.

        Notarial act or refusal in its commission, notarial act is appealed to court.

       The right to appeal a notarial act or refusal to perform it, a notarial deed has a person whose rights and interests relate to such acts or acts.

      All notarial acts committed by notaries or officials of local self-government bodies shall be recorded in the registers for the registration of notarial acts after the notary has made a certified statement on the document or will sign the document that is issued to him.

      Each notarial act is registered under a separate serial number. The number under which the notarial activity is registered is indicated on the document issued by the notary or in the attestation. Record in the register is proof of the commission of a notarial act.

     The amount of state tax rates levied by state notaries for notarial acts, as well as the grounds for the release of subjects of notarial legal relations from payment of state duty, was regulated by the Decree of the Cabinet of Ministers of Ukraine "On State Duty" of January 21, 1993 No. 7- 93.

Sources: [1-12].

Questions for self-examination

1. Place of the certificate of contracts of alienation of real estate, mortgages, vehicles.

2. Deadlines for the commission of notarial acts.

3. Establishing a person under the age of 16. Verification of credentials of the representative.

4. Verification of credentials of the representative by power of attorney.

5. Signing notarized documents.

6. Grounds for refusal to perform notarial acts, the order of its registration.

7. Appeal of notarial actions or refusal in their commission.

8. Registration of notarial acts.

**Theme 8. General rules of certification of transactions. Notary certification. Application by a notary law of foreign states**

**Plan**

**1. The concept of the transaction and the requirements for its validity. Pravochiny requiring a mandatory notarial certificate.**

**2. General rules of certification of notaries of transactions.**

**3. Procedural procedure for the certification of transactions on the alienation of immovable property.**

**4. Certificate of contracts on mortgages of real estate, mortgages of vehicles, goods in circulation and processing.**

**5. The certificate of contracts on privatization of property of state enterprises.**

**6. Certificate of marriage contract.**

**7. Certificate of wills.**

**8. Certificate of power of attorney.**

**9. Order of appointment and duties of the executor of the will. Issuance of a certificate**

**executor of the will.**

**10. General provisions on inheritance.**

**11. Issuance of certificates of the right to inheritance.**

**12. Issuance of certificates of title to share in common property**

**marriage in the event of the death of one of them.**

**13. Issuance of a certificate of purchase of property from public auction (auctions).**

 The law is the action of a person who seeks to acquire, change or terminate civil rights and obligations. The content of the agreement can not be in conflict with the Civil Code of Ukraine, other acts of civil law, as well as the moral principles of society. The lawyer should be directed to the actual onset of the legal consequences that are caused by him. The expression of a party to a transaction must be free and conform to his / her domestic will and be done in the form prescribed by law.

      The lawyer, which is done in writing, is subject to a notarial certificate only in cases established by law or by agreement of the parties. At the request of a natural or legal person, any transaction may be notarized. The notary or officials who certify the transaction verify whether the content of their certified transactions complies with the requirements of the law and the actual intentions of the parties.

The law of the alienation and pledge of the property subject to registration shall be certified on condition of submission of documents confirming the right to ownership of the property being alienated or forcible. In case of mortgage of future property or creation of a security encumbrance in the future, the property of the notary will be provided with documents confirming the existence of rights to acquire such property in the future. Also, the absence of a prohibition of alienation or seizure of property is checked.

The certificate of transactions concerning the alienation of a mortgage, a residential house, an apartment, a summer residence, a garden house, a garage, a land plot of other real estate, as well as transactions regarding the alienation of vehicles subject to state registration, shall be carried out at the place of identification (place of registration) of this property or location (place of registration) of one of the parties to the relevant transaction.

Procedural procedure for the certification of contracts for the alienation of immovable property, mortgages of immovable property, vehicles is regulated by chapter 2 of Section II of the Procedure for the commission of notarial acts by notaries of Ukraine.