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LABOUR LAW

ADMINISTRATIVE LAW

AGRARIAN LAW. LAND LAW

On the first page – the monument to Magdeburg Law in Kiev

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CONTRACTUAL REGULATION OF THE CONTRACT RELATIONS IN BUSINESS ACTIVITY

Article is devoted to definition of approaches to contractual regulation in the contract relations, the analysis of essential conditions of the most widespread contracts.

According to p. 1 Art. 42 of the Constitution of Ukraine, everyone has the right for the business activity which isn't forbidden by the law. These provisions found the reflection in the industry legislation. So, according to item 4 of Art. 3 of the Civil code of Ukraine of one of the general beginnings and sense of the civil legislation is freedom of the business activity which isn't forbidden by the law

It's made the conclusion about adoption of the Civil Code and HK of Ukraine in which some new regulations of the contract relations are fixed, there was a need of the analysis in such provisions, identification of contradictions between them, their comparison with provisions of group companies in 1963 all of this is of great importance for the correct and unambiguous application of Civil Code standards, their harmonization and adaptation to standards of the EU. At the same time, as well as any civil contract, the turnkey contract has to consider interests of both contractors - the customer and the contractor. Thus the legal design of this contract gives the chance, on the one hand, to provide full economic independence to the contractor for the contractor and with another to guarantees to the customer the right to exercise control of work progress at all stages.

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SINGLE QUESTIONS ABOUT RECOGNITION OF MEMBERS OF AFFAIRS OF JOINT-STOCK COMPANY BY PARTICIPANTS OF THE CORPORATE CONFLICT

An attempt to consider issues it's related to recognition of the members in a joint stock company's affairs by the parties of the corporate conflict which is made in the article. Two basic matters were the main in the article: 1) recognition of the company's body as a subject of civil relations and its empowerment with civil legal personality and 2) recognition of such subject of corporate governance, which is not recognized as a subject of civil law, but acquires the status of corporate relations subject.

The problematic of subject structure definition of the corporate relations lies among the persons which are corresponded to such status and what can't be allocated with corporate right- and capacity in the general civil understanding of the specified concepts offered by the legislator and the legal doctrine

We consider that only those can be participants of the corporate relations who have legal status, necessary for participation, can be considered as subjects of the corporate conflict, is the subjective corporate rights and obligations for an occasion of a certain object which are legally connected with each other, can be defined in this regard as authorized and is obliged persons. Thus, participants of the corporate conflict within the stock company are shareholders, society and members of its bodies. Concerning the last our opinion is based that they are covered general education with corporate interest of society and have own interests which achievements can break (not to recognize, challenge) anr to create threat of violation of the subjective corporate rights or corporate interests of shareholders or in the corporate interest of stock company.

Oksana Makarenko,
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PARTICIPITATION OF TRUSTEESHIP AND GUARDIANSHIP BODIES INTO THE RELATIONSHIP OF ASSISTANCE TO CAPABLE NATURAL PERSONS (ART. 78 OF CIVIL CODE OF UKRAINE)

The article is devoted to the research of role of guardianship and tutorship authorities in legal relationship of rendering assistance to a capable physical person in a realization of his rights and obligations in cases, when he/she cannot do it him/herself as a result of physical disability.

The Civil Code of Ukraine provides possibility of granting to the capable natural person the help in implementation of its rights and fulfillment of duties if it for health reasons can't do it independently (Art. 78). The specified institute, as well as bodies of trusteeship and guardianship, is important, after all as an implementer of the properties which are necessary for sane participation in a civil turn. At the same time, giving assistance to the capable person has features as his installation, powers of the assistant, despite a certain unity of tasks of these institutes. In connection with this fact there is a number of questions concerning participation of agencies of trusteeship and guardianship in the specified relations, their functions and powers, which causes the relevance of our research.

The purpose of this article is clarification of a role of agencies of trusteeship and guardianship in the relations on assistance to capable person in the context of Art 78 of Civil Code of Ukraine.

We consider that bodies of the public government in a specific (control and supervising) form participate in the relations which appear from the contract on assistance, however as the sides of this contract can't be considered. Firstly, because bodies of trusteeship and guardianship don't participate in formation of the contents of the contract (its conditions); secondly, because the rights and obligations of appropriate authorities appear not from the contract and aren't defined by the contract. They appear and may be defined only on the basis of the law.

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TO THE QUESTION OF DIFFUSIVE RIGHTS OF CONSUMERS

The article researches the rights of an individual consumer in doctrine and legislation of different countries. Analyzed categories are widely used in international private law doctrine such as «diffuse interests» and «diffuse rights» that.

The Civil Code of Ukraine provides doctrine that each person has the right for protection by the civil law in case of its: violation, non-recognition or contest, and also protection of the interest, non-contracting the general principles of the civil legislation. In other words, the state guarantees protection of the civil rights and interests, and the legislator operates with such terms as "the subjective right" and "interest".

The purpose of this article is researching of the consumers rights, in particular the separate rights of consumers, their improvement and protection.

The subjective Civil Law is a measure of legal behavior of the participant in civil legal relationship. The content of the subjective right are the legal opportunities given to the subject which in the set make powers. In this context of the position Y. Pyanova who notes that the right for protection can't be recognized as the separate subjective right.

it is necessary for Ukraine to account the foreign experience, after all liberalization process, for example, of electrical power branch is already carried out. Thus, liberalization of the market and loaning of provisions of other countries legislation according to it or standards of the EU it has to be carried out according to the national legislation.

The carried-out analysis allowed to formulate author's definition of the diffusion rights as is right, the reflecting individual interests of the person united in separate group, have the indivisible nature and are united not so much by specifics of relationship between them, how many their heterogeneity, however an orientation on satisfaction of uniform interest.

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PROBLEMS OF THE THEORY AND PRACTICE REVISION OF LEGAL PROCEEDINGS ACCORDING TO NEWLY DISCOVERED FACTS IN CIVIL COURT

This article states that the review of court decisions in connection with new circumstances is a separate civil procedure optional stage, which characterized his subjects, object, object and grounds for review. It is noted that the review court decisions in connection with new circumstances is not a way to check their legality at the time of adoption.

The Law of Ukraine "About modification improvement of a procedure in legal proceedings of some laws of Ukraine» since 20.12.2011 got some changes in chapter 4 of the section V of the Code of Civil Procedure of Ukraine and an order of judgments revision according to newly discovered facts are. In particular, the maintenance of CPC (Central Proceedings Code) of Ukraine it is added with Art. 3641, according to which judge checks its compliance to requirements of Art. 364 of CPC of Ukraine and resolves an issue of production opening during three days after coming of receipt in court of the statement for revision of the judgment according to newly discovered facts.

In our opinion, it's expediently of three-stage order of revision of judgments on newly discovered facts. So, court to which got the application for revision of the judgment according to newly discovered facts is submitted to:

– it resolves an issue of proceeding opening;

– by judicial process it establishes existence and validity of newly discovered facts, cancels the judgment and appoints business to consideration, and in case of an absence of proofs of the bases for revision gets the decision about leaving of the statement without satisfaction;

– by judicial process it considers a civil case and gets of the new judgment in fact of requirements.

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RIGHT FOR THE PREVENTIVE PROTECTION OF LABOR RIGHTS AS SUBJECTIVE RIGHTS

In this article author attended to the gist of right to the preventive protection of the labor law and its peculiar properties.

Today it should be noted that our society is on the threshold of new codification of the labor legislation. It is necessary not only to reflect an accurate print of restoration of the labor law in such conditions, but also to pay attention to acute legal issues which existing separate layer in the labour law.

The goal of this article is the clarification of subjective essence in right for preventive protection of the labour law.

Considering the adduced arguments, the subjective right covers such competences for preventive protection of the labour law:

– opportunity to demand from the obliged person (the subject of preventive protection of the labour law: public authorities, the employer, etc.) to take measures for prevention of the regulatory labor law violation in the future

– opportunity to demand from the obliged person (the subject of preventive protection of the labor law: public authorities, the employer, etc.) to take measures for prevention of the security labor law violation in the future

– opportunity to demand of providing in realization of the protection right or the right for preventive protection of the labour law

The carried-out analysis allowed finding out essence of the subjective right for preventive protection of the labor law. The formulated author's definition of the subjective right for preventive protection of the labour law should be understood as a look and measure of possible managements behavior of the person, it is expressed in opportunity by the actions to defining system of measures, means, ways orders by means of which realization of the labour law is provided and guaranteed by the state.

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IMPROVEMENT OF STATE PRINCIPLES OF AGRARIAN SPHERE

The article discusses the principles of state regulation of the agrarian sector. The analysis of normative legal acts of the regulatory sphere and proposals concerning improvement of management principles.

State and legal regulation of the agrarian sphere of Ukraine provides implementation of the state regulatory activity, except functions of management and implementation by state bodies of the state control of observance of the agrarian legislation by all subjects of the agrarian relations. One of types in the state regulatory activity of the agrarian sphere is the authorization system according to which the subjects of the agrarian relations which are carrying out economic activity have to get permission of authorized affair of executive government to a certain type of economic activity which has allowing character. In other words, allowing character is administrative and legal means of the state influence on activity in subjects of managing in the agrarian sphere.

The purpose of this article is the review of normative legal acts in the sphere of managing and introduction of suggestions for improvement the principles of the state regulatory activity in the agrarian sphere.

In a way, the analysis of the state regulatory principles gives the grounds to claim that the principle of a accessing is one of the state affair and the, most important in activity. Inclusion of this principle in the Law of Ukraine "About licensing of types of economic activity" will help in improvement of the principles of the state regulatory activity in the agrarian sphere at implementation of foreign economic activity by agricultural producers.

For the purpose of principles of a state policy improvement in the sphere of licensing we suggest to include the principle of accessing into the Art 3 "The principles of state policy in the sphere of licensing", Law of Ukraine "On licensing of types of economic activity".

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FAMILY FARMING: PROBLEMS OF LEGAL REGULATING

This article analyzes the legal issues of creation a new form of agriculture activity in Ukraine these are family farms. Author examines the peculiarities of state registration and taxation of family farms.

The European Union has a wide experience of successful management of family farms which play an important social and economic and cultural role, and also positively influence environment. For borrowing of positive experience of management and development of European agriculture, Ukraine became on the way of European integration and assumed obligations for reduction of the national agrarian legislation in compliance with the legislation of the EU.

In this regard special relevance is gained with a question of the latest tendencies research of legislative development in creation of family farms in Ukraine.

The purpose of article is researching in legal questions of such new form creation of maintaining agricultural production in Ukraine, as family farms, and also consideration of their state registration features and the taxation.

Above said analysis testifies that Ukraine goes on the way of development and improvement of the farming legislation. However search of ways to formalization of family farms and implementation in system of market functioning of agrarian sector should be continued.

First of all it is necessary to legalize a family farm as a special form of land managing without acquisition of the legal entity status or the physical person entrepreneur.

It is caused with the dominate relation in world economic practice to family farming as to a specific form of economic activity which is extremely sensitive to external regulating influence.

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SEPARATE ASPECTS OF LEGAL ORDER ABOUT LANDS OF INTERNAL WATER TRANSPORT OF UKRAINE

The article examines some legal defects of a legal regime of land inland waterway transport in Ukraine, suggests ways to address them.

Actuality of a subject is caused with absence of appropriate legal base for definition of a legal regime of lands of an inland water transport, in particular: river ports and terminals in Ukraine.

Relevance of a subject increased with registration of the bill on an internal water transport of 04.08.2015, №.2475a in the Verkhovna Rada of Ukraine.

The legal order of lands of an internal water transport is defined as fragmentary for today; in particular there is no appropriate regulation of land legal relationship concerning territories of river ports and terminals.

So, at legislative level, it's necessary to set a legal regime only for sites which need it owing to their natural features or specifics of activity that leads to violation of natural properties of the land (for example, for shores of waterways, territories of ports, terminals, bases of the parking of small courts, etc.). So, it's possible to determine features of a legal order of such territories, and with LC(Land Code) of Ukraine in general it's need to exclude these articles with the law on an inland water transport.

There is no need to give universal definition of the term "port". This term can have different meanings for the different purposes.

It is possible to understand under port as land and legal category such territory determined by limits and the water area with a particular legal regime.

As the terminal as land and legal category it should be understood as the limited territory and the water area because the terminals, as a rule, carry out functions of port. The difference may be only in the creation procedure.

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FEATURES OF FUKCTIONING SYSTEM OF DOMESTIC AMENABILITY IN CHINA

This article is devoted to the relationships of collectively owned landaus in the People's Republic of China. The article studies the main features of the state and collective owner ship of land in China.

The stable development of the country depends on the balanced policy on regulation of the land relations. And the last thesis in Ukraine got only declarative display, in many countries of the world, in particular in People's Republic of China, it not only the main state principle, but also carrying out necessary purposeful actions at the national level which consists in concrete initial state and political steps.

The purpose of this article is the determination of the main features of functioning of system of domestic amenability in China and its influences on development of the land relations.

In a way, the system of land using in China differs from other ever known world concept in a big originality and absence of analogs. First of all a characteristic sign of the Chinese system of land using is in the fact which founded only on the state and collective ownership which form two separate systems of land using with a separate legal regime. Ukraine and China have absolutely different systems of a state political system, various forms of ownership on the earth. Ukraine is the democratic state which recognizes the state, collective and private property on the earth.

PRC is the socialist state, which land can be only in the state or collective ownership. However, despite it, feature of the land relations in the People's Republic of China is existence of rather free turn of the earth that deserves attention from the point of view of both the theory, and practice.

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PARTISIPATION FEATURES OF UKRAINE IN THE INTERNATIONAL AGREEMENT ABOUT SUGAR 1992

This article describes current situation of Ukrainian sugar industry and country's position in the world trade in this commodity. Special attention is given to the main provisions and peculiarities of participation of Ukraine in 1992 International Sugar Agreement. Strong emphasis is given to the problems of Ukraine related to the fulfillment of its obligations before International Sugar Organization.

The purpose of this article is studying the question of participation of Ukraine in the International agreement about sugar 1992, the analysis of basic rights and obligations of the country for this international treaty, researches of features of its membership in the International organization for sugar.

Said above information testifies that it is difficult to give an objective assessment of participation of Ukraine in the International agreement about sugar 1992 and the International organization for sugar. On the one hand, considering outputs and potential of development of sugar industry of Ukraine, as leading power in this sphere it has to use much more widely the available resources and opportunities, to make more efforts for the statement at the international level. Moreover, membership in ICS 1992 creates all prerequisites for this purpose. However on unclear on that the reasons of the politician of Ukraine in sugar sector it is characterized today only by passivity and inconsistency. The neglect the obligations for ICS 1992 and underestimation of advantages which are provided by the agreement, is bright to that confirmation. Now it is possible hung to twist only hope that in the near future the situation radically will change for the better and Ukraine considerably will strengthen the international cooperation in this direction, will resume membership in the International agreement about sugar 1992 and activates work in the International organization software sugar.

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EVOLUTION OF SOCIAL AND LAW POITS OF VIEW TO CRYMINAL PROBLEM ACCORDING TO M. HERNET (1874-1953)

The article deals with the periodization of criminal law sociology, based on Michael Hernet's studies. Three stages of historical periodization: of criminal law sociology were shown: preparatory, formation, development.

Actuality of research subject is connected with necessity of efficient increasing of fight against crime which captured many spheres of life of the Ukrainian society. One of problem solutions is the development of questions of criminal law sociology, which allows investigating factors caused this phenomenon.

The purpose of this article is the studying of a contribution of M. Hernet to research of social history of criminal law, allocation of the separate historical periods and determination of their features and a statement of doctrinal views of the scientists who work in this sphere.

I collected data on quantity of crimes and such indicators, as: age, sex, relationship status, heredity, literacy; economic factors: price of bread, poverty for the purpose of finishing influence of sociological factors on M. Hernet's crime. The scientist showed that the most significant indicators are: price of bread, food, poverty level; the second place is taken by age, heredity, living conditions; the third - a floor, climate, a season, an origin and education, education, relationship status.

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SUBCULTURE OF ANOMIE IN FIELD OF SUBCULTURE SCIENCE: LAW CONTEXT

In the paper some issues of criminal subculture are analyzed in the law, historical and cultural scince aspects. In particular, these problems are connected with criminals' subculture in the questions of analysis the criminals' subculture in, counterculture, anticulture in the context of the subculture science.

In a scientific discourse of modern law science the problem of criminal subculture of an anomy and its connections with other culture phenomena takes a special place. The subculture of an anomy, as a rule, was considered as a peculiar autonomous phenomenon, sometimes in the context of studying various problems and aspects of fight against crime (prevention, the reasons and conditions of rise in crime, etc.).

The purpose of this article is to state existence of an important place and unique value of anomy subculture in the context of subcultural science, apprehension of this phenomenon from jurisprudence positions.

Analysis showed that it's necessary for development and representation of legislative initiatives, and for further modification of the Ukrainian legislation, considering specifics and development of subculture of an anomy. For this purpose it is need to implement also foreign experience.

Thus, the understanding danger of subculture multi-vector nature in an anomy as public reality, its unity and variety is requirement of the present. Complex and system, objective, comprehensive, thorough scientific investigation of subculture of an anomy, first of all its criminological, historical, culturological judgment, studying of its essence and the contents, prevention and counteraction to subculture of an anomy have to become reliable pledge of improvement of a criminogenic situation in our cathedral, indivisible, European, legal, independent, to the young Ukrainian state. Hard limitation of lawlessness subculture and reduction of an anomy as public reality will help in strengthening of legality and a law and order, discipline and humanity.