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METHODOLOGY OF JURISPRUDENCE

INTERACTIVE MANUAL

MINISTRY OF EDUCATION AND SCIENCE
OF UKRAINE
NATIONAL UNIVERSITY «ODESA LAW ACADEMY»
Department of General Theoretical Jurisprudence

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The interactive manual is designed to train specialists in the specialty "Law" and provides interactive learning using technology of Google Suite Education. The authors of the manual aim to deepen the legal training of masters in educational institutions. The discipline reveals the essence and provides an opportunity to understand and comprehend the law, studying the features of Ukrainian law, on the example of the use of approaches and principles of classical, modern and postmodern methodology in jurisprudence.

The manual is intended for teachers, students, graduate students, as well as anyone interested in the issue of methodology of jurisprudence.

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CONTENT

1. DESCRIPTION OF THE COURSE

The subject of the discipline "Methodology of Jurisprudence" is the methodological aspects of the development of modern legal science in the context of globalization, informatization and individualization of society, the transformation of law and state.

Writing a Master's thesis, working with the scientific literature, composing essays, conference presentations or writing a scientific article in the sphere of jurisprudence requires the knowledge of specific methodology. Methodological approaches, concepts, theories, methods and other tools used in studies that are exploited in jurisprudence are characterised by the specific contents and targeting. That results from the changes of paradigm in jurisprudence. The changes of paradigm in jurisprudence cause the necessity for comprehension of the peculiarities of classical and modern methodology of jurisprudence, in order to use the above mentioned methodology in the prospective theoretic and practical lawyers' work.

The discipline "Methodology of Jurisprudence" deepens the legal training of masters in the educational institution. It develops and provides an opportunity to understand and comprehend the law, on the example of the use of approaches and principles of classical, modern and postmodern methodology in jurisprudence.

The methodology of jurisprudence belongs to the cycle of theoretical sciences of legal disciplines and is related to such disciplines as general theoretical jurisprudence, philosophy of law, sociology of law, branch legal disciplines, as well as non-legal disciplines, in particular, philosophy and political science. The study of methodology of jurisprudence is based on knowledge of definitions, categories and concepts mastered by students upon obtaining a certain qualification level.

2. PURPOSE AND TASKS OF THE COURSE

The purpose of the course is to provide the students with the basic, fundamental knowledge about the methodology, as the system of methods, techniques and approaches to the research, in the sphere of jurisprudence; its structure, contents, specifics and prospective of the practical use. Studies of the Methodology of Jurisprudence together with learning the language of the modern Law and State Studies is also aimed at preparing students to write Master's works of the high quality.

This goal determines **the structure of the course**: students should get acquainted with the problems of understanding the structure of the methodology of jurisprudence, its content, the correlation between methodology of jurisprudence and the other sciences of the social cycle; features of classical, modern and postmodern methodology, their practical use; axiological approach in jurisprudence; the specifics of the anthropological approach in jurisprudence; the basics of using a civilizational approach; skills of using the hermeneutic approach and the language of Ukrainian law.

According to the results of the course students:

Must know:

- specifics of classical, modern and postmodern methodology;
- features of the principles of the modern methodology of jurisprudence;
- philosophical and legal bases of axiological, anthropological, civilizational and hermeneutic approaches of the methodology of jurisprudence;

– the specifics of the language of law as the basis of the methodological vision of law and the state;
– features of legal and state development of Ukraine in the conditions of dialogue between civilizations and cultures.

Must be able to:

– apply modern methodological concepts in the sphere of jurisprudence for the solution of the practical tasks;
– demonstrate understanding of the peculiarities of methodology of jurisprudence and distinguish classical and modern legal research methodology;
– identify and apply the anthropological and axiological approaches in legal research;
– identify and apply the hermeneutical and civilization approach in jurisprudence;
– solve scientific theoretical and practical problems in the area of law based on the application of general, specific and special methods;
– use the logical rules for constructing concepts in a legal study, delimit legal categories and concepts, and build a category apparatus of legal methodology.

As a result, students acquire the following **competencies:**

Knowledge and understanding:

– ability to solve complex tasks and problems in the particular sphere of professional activity or in the studying process which involves completing research and/or implementing innovations and is characterized by diversity of the circumstances and requirements;
– special conceptual knowledge received in the process of studying which is the basis for consistent understanding and innovative activity, especially in the context of getting the Master's degree;
– ability to learn and acquire modern approaches, knowledge and apply them in the practical activity;

– ability to make plans and do projects: implementation of research and/or innovative activity;
– use of foreign languages in the professional activity.

Applying of knowledge and understanding:

– ability to work in the areas of international, integrative, national and local law;
– understanding of rule-making, law enforcement and legal interpretation activities, taking into account the acquired knowledge of methodology of jurisprudence;
– ability to implement practical, research and pedagogical activities based on knowledge of legal methodology and legal experience.

Formation of judgements:

– ability to identify and create legal significant situations on the basis of methodological knowledge, obtaining their factual and legal characteristics, formation of the tasks;
– analysis of the possibilities of using legal means and ways to solve problems, taking into account the consequences and existing limitations;
– alternative of the optimal variant of the legal decision and prognostication of possible legal results;
– critical understanding of the main legal problems and the formation of a reasonable position on ambiguous phenomena in legal science and practice.

Teaching methods during the study of the discipline "Methodology of Jurisprudence" include the method of heuristic survey, Socratic method, method of modeling situations, case method, use of Google Suite Education.

Methods of current control: assessment of oral presentations and remarks of students during the seminar; evaluation of written individual creative works and tasks performed using the platform Google Classroom.

3. CONTENT OF THE LECTURE COURSE

Topic 1.
The concept and content of legal research methodology

1. Concept of legal studies and jurisprudence
2. Methodology as a conceptual center and an instrument of jurisprudence
3. Methodology of legal research as a system, its components
4. Conceptual and instrumental levels of the legal research methodology

Result: student will be able to demonstrate understanding of the peculiarities of legal research methodology.

1. Concept of legal studies and jurisprudence

Jurisprudence is the system of ideas, judgments, concepts, rules, mythologemes about law and state.

Jurisprudence is often identified with legal science: the system of knowledge about law and state. However, jurisprudence contains not only scientific, but also philosophical knowledge. Besides, jurisprudence is not limited by the system of knowledge, it is still related to legal experience, beliefs, includes various myths (power belongs to people, law expresses the common will).

Jurisprudence also includes legal practice, as apart from scientific and philosophical knowledge, it includes pragmatics, as well. Therefore the concepts of the methodology of legal science and methodology of jurisprudence are not the identical. In the concept of methodology of jurisprudence, the word «methodology» is used in much wider meaning, since it covers the so called idea of thinking activity.

The subject and object of legal science. **The concept of object is wider**; it covers the phenomenon of the external world, which the cognition and practical impact of the persons is spread on. **The subject**, in its turn, is the part, or the side, one or another particular aspect of the object, that is studied within the definite sphere of science; this is the range of the most significant questions, which it works on.

2. Methodology as a conceptual center and an instrument of jurisprudence

According to Webster's dictionary, **methodology** is: a body of methods, rules, and postulates employed by a discipline: a particular procedure or set of procedures used in research; the analysis of the principles or procedures of inquiry in a particular field.

The concept of methodology. Here, first of all, it is necessary to consider, in which meaning methodology is understood: the scientific or the philosophic one.

If we consider it in the strictly **scientific meaning**, then we may give the definition of methodology through the principle of the systematic character of knowledge and, res-pectively, the system of cognition. And, if we study methodology in the **philosophical meaning**, it is the part of epistemology (the theory of cognition).

In jurisprudence it is common to define **three paradigms or three stages of deve-lopment of the scientific rationality:** 1) classical, 2) non-classical and 3) post non-classical (or postclassical). The difference between these paradigms is in the use of certain principles of cognition.

Methodology of jurisprudence is the system of principles, techniques, methods, categories, concepts, approaches and paradigms, with the help of which comprehension law and state is achieved.

3. Methodology of legal research as a system, its components

Methodological instruments may be any knowledge, received in the rational (science, experience), as well as in the rational way (faith, intuition), which is used to receive other knowledge.

Methodological instruments is the central link, core of any methodology, set of all its techniques and ways. However methodological instruments turn into the methodology only then, when certain regularity and systematic character become visible in it.

According to professor Oborotov **the main components of methodology of legal research** are: the methodological principles, conceptual ideas, categories and methods.

4. Conceptual and instrumental levels of the legal research methodology

The conceptual level of the methodology of legal research: conceptual ideas of the modern legal studies; concepts, hypotheses and theories in the structure of the methodology of legal research; methodological approaches in the structure of the methodology of legal science.

The instrumental level of the methodology of legal research: methods of legal studies, methodology of research in the sphere of law and state.

Topic 2.
The conceptual level of legal research methodology

1. The concept of paradigm and its significance in the methodology of legal research
2. The classical paradigm of jurisprudence
3. The nonclassical paradigm of jurisprudence
4. The post-nonclassical paradigm of jurisprudence

Result: student will distinguish classical and modern legal research methodology

1. The concept of paradigm and its significance in the methodology of legal research

Paradigm may be understood in the wide and narrow senses.

In the **narrow understanding**, paradigm is considered as the scientific picture of the world, based on a certain type of rationality and claiming the common value in the framework of one or another scientific discipline.

In **the wide sense paradigm** is a way of creation of a task and finding solutions for it. It is important to understand, that if we use the narrow interpretation of the paradigm (perceive the paradigm as the scientific picture of the world **in jurisprudence**), it merges with legal doctrine: the specific perception of the picture of the world in jurisprudence.

If we consider the paradigm in the wide sense (**in the framework of jurisprudence, as well**) – the paradigms are, actually, the classics (normativism, sociological theory, psychological theory), nonclassics (anthropology, axiology) and post-nonclassics (hermeneutics, communicative theory).

So, **the types of rationality are:** the classics, nonclassics and post-nonclassics. This corresponds to the paradigms in jurisprudence in the broad understanding (the way of creation of a task and finding solutions for it).

2. The classical paradigm of jurisprudence

A **principle** is a cognitive standard of a person concerning the subject of knowledge, which defines the prior knowledge, the process and result of his cognition.

The use of such **principles** is specific and determining **for classical paradigm**: objectivity, rationality, historicism, monism, determinism.

The features of the classical paradigm in jurisprudence:

- Law is considered as objective reality, as a part of the world which surrounds a person in the everyday life
- Law is seen as a social mechanism, whose rules of functioning are similar to the rules of functioning of any mechanism
- The rational component is always dominant in the contents of law; law is the embodiment of wisdom and logic
- Law serves as the ultimate institution in solution of social collisions; the objective truth is possible in law
- Stable causal relationship, which is of the universal character, exists in law

3. The nonclassical paradigm of jurisprudence

Among **the principles of nonclassical methodology in jurisprudence**, we can define: subjectivity; abstracting from history; taking the rational and irrational into account; indeterminism etc.

The features of the nonclassical paradigm are the following:

- Law is seen as a component of the human consciousness and a criterion of self-evaluation and self-limiting
- Law is immanently present in a person, that is its reality is first of all subjective, not objective
- Law is a relative, not absolute category
- Development of law is a pluralistic process of civilizing
- Human rights are the climax of jurisprudence

4. The post-nonclassical paradigm of jurisprudence

The formation of the post-nonclassical methodology is linked to the **philosophy of postmodernism,** on the one hand, and with the fact that the nonclassical paradigm could not realize the potential of axiology, anthropology and hermeneutics, on the other hand.

The principles of post-nonclassical methodology are: inter-subjectivity, inter-disciplinary, pluralism, supplementation etc.

The features of post-nonclassical paradigm are the following:

- Law is interpersonal construction whose sense is defined by the discoursive means
- Thinking about law changes law
- Jurisprudence lost its monopoly for cognition of law
- Law is pluralistic in ontological as well as in epistemological aspect, which means that there are no the best or the worst ways of its cognition
- Any acting law is a result of interpretation.

Topic 3.
Types of legal doctrines as research programs

1. The concept of a research program
2. The concept and features of the legal doctrine as a research programme
3. Pluralism of legal doctrines in modern legal research methodology

3.1. Positivistic legal doctrine and its basic postulates

3.2. Natural law doctrine and its types

3.3. Sociological legal doctrine and its types

3.4. Integrative legal doctrine and its types

Result: student will be aware of the diversity of legal doctrines and will be able to determine the basis of the research program

1. The concept of a research program

"**Research program**" is a concept that was coined into the scientific use by Hungarian historian and philosopher of science Imre Lakatos.

The research program is a meta-theoretical configuration, in the frames of which theoretical activity is carried out; it is a series of theories that are united by a set of fundamental ideas and methodological principles.

In terms of the concept of research programs, the development of science is not limited by **revolutionary** events. In most cases, it goes on **evolutionary.**

Research programs do **not always replace each other, but always compete** with each other.

Structure of the research program.

1) **The hard core** of the program is a system of fundamental principles and ideas that determine the content of the academic research program;

2) The program has **the protective layers**: a set of theories that logically flow from the contents of the hard core, protecting it from counterarguments;

3) **Positive heuristics** is a set of research methods and tools that are desirable and re-commended for the academic research program;

4) **Negative heuristics** is a set of research methods that are considered undesirable for the academic research program.

2. The concept and features of the legal doctrine as a research program

Legal doctrine is a category of jurisprudence, reflecting the process and result of a person's cognitive activity of law studies, its evaluation and relation to it as an integral social phenomenon.

Legal doctrine is such only then, when it has three elements:

1) **the central approach**, which defines the basic idea of legal doctrine;

2) **a system of postulates** – the most general statements which are accepted as initial;

3) within its framework, there is a principal **possibility of explaining everything** that happens in legal reality (here the legal doctrine is close to a broad interpretation of the paradigm).

Legal understanding as a research program:

- Types of legal thinking compete with each other in explanation of legal reality, and do not change each other, as it can happen in the case of paradigms. Altering the paradigm changes the direction of the development of legal doctrine
- Each type of legal doctrine is based on the fundamental idea that appears in the form of an assumption about a particular nature of law
- Types of legal doctrine form different conceptions of law which serve as a protective zone (layer) of the scientific research program
- Each type of legal doctrine has a positive and negative heuristic

3. Pluralism of legal doctrines in modern legal research methodology

3.1. Positivistic legal doctrine and its basic postulates

The normative (positivist) direction, for which law is, first and foremost, normative acts that fix the rules of people's behavior, which come from the state and are provided by its coercive force. **The norm is in the center**.

An important idea of legal positivism is the so-called **separability thesis**, or the "thesis of delimitation", the essence of

which is the statement of the absence of a necessary connection between law and morality. Separability thesis is an important element of the hard core of legal positivism.

Legal norms are different from all other rules and standards that exist in society, not in its meaning, but formally, and therefore legal requirements are compulsory or the ones that create obligations of a certain behavior, regardless of what kind of behavior is required.

3.2. Natural law doctrine and its types

Natural-legal (philosophical, axiological) direction (jusnaturalism), according to which law creates principles and values of humanity and a system of ideas (concepts) for compulsory norms, rights, duties, prohibitions, natural conditions of their origin and implementation, order and forms of protection, which are oriented on them. Legal consciousness is in the center of it.

The natural law doctrine is based on **the idea of the existence of a necessary link between law and morality**.

The content of law depends not only on social or normative facts, but also on those ideas whose existence in law itself makes it a social system that is substantially different from other social systems.

Positive and negative heuristics of jusnaturalism.

- Usually philosophical ideas of phenomenology and hermeneutics are used
- Convincing metaphors are preferred to the rigidity of logical constructions (in European tradition)
- One of the key issues is the idea of justice and the possibility of its realization in the positive law
- Jusnaturalists are nearly not interested in the language problems related to analytical philosophy

3.3. Sociological legal doctrine and its types

Sociological theory in law is characterized by:

- a functional approach to law (the desire to know law in action, in the process of functioning);
- defining legal relations as the main, most essential element of law;
- "irreducibility" of law to legislation.

The hard core of sociologism is the following idea: "The legal nature of rules is based on the effective and strong (in the sense of a correspondent social group) mechanism of coercion"

The idea of pluralism of law is stated, the possibility of the existence of exclusively "state" law is discussed.

Law is considered in terms of its coercive character and legitimacy. The rules which are the most legitimate and are provided with the most effective coercion are the law, in its essence.

Positive and negative heuristics of sociologism.

- The sociological methodology is actively used
- There is no analysis of legal texts, there is nearly no hermeneutical research
- The main theoretical problem is the institutionalization of law, that is, the search for the moment of interiorization of legal rules
- Judicial law is the main subject of research.

3.4. Integrative legal doctrine and its types

Proponents of integral concepts believe that the development of the concept of law is possible only in **a combination** of positivism, jusnaturalism and sociologism

The most common variant of constructing the integral concepts of legal doctrine is the expansion of inclusive positivism by the expense of some sociological hypotheses.

According to the supporters of the integrative approach, law must be considered from the point of view of the problems of communication and legitimacy, which can't be reduced to the questions of the source and the coercive nature of the legal norm.

Law by its nature is not only dialogical, but also polygonal and appears as a polylogue of persons entitled with some rights and duties; it is a kind of social communication.

Topic 4.
Anthropological approach in legal research methodology

1. Anthropological approach and legal anthropology
2. The subject and methodology of legal anthropology
3. Practical aspect of anthropological approach
3.1. Legal ethnology and ethnography
3.2. Anthropology of state power
3.3. Anthropology of legal behaviour

Result: students will be able to identify and apply the anthropological approach in legal research

1. Anthropological approach and legal anthropology

The concept of anthropological approach.

Anthropological approach in legal knowledge is a general strategy of legal research that involves the study of law or of the certain legal phenomena through the prism of human dimension, cultural diversity and legal pluralism.

The use of anthropological approach involves application of the methods and knowledge of **legal anthropology** in legal research.

Professor Kovler A.I. in his monography "Anthropology of law" gave the clearest definition of **legal anthropology**: «It is an academic discipline which explores the processes of

judicializing of human existence characteristic of each historical type of civilizations, by means of analysis of the oral and written monuments of law, practices of public life, and seeks to determine the patterns, lying in the basis of human communities' social and legal life».

The key ideas of anthropological approach:

- Anthropological approach is associated with the general social doctrine of a man (social anthropology). Consequently, a man appears as the center of legal reality
- Anthropological approach focuses on the context of law. If usually legal research takes into account law "in itself", then in legal anthropology law is taken as one of the components of the human-dimensional world of society
- Anthropological approach is connected with the doctrine of human needs. Law is considered as a tool that enables to meet these needs (in freedom, order, predictability, reliability of a social system, etc.)
- Anthropological approach is aimed at studying different, unique phenomena. Human existence is characterized by cultural diversity, because in order to forge its essence, a man must create difference.

2. The subject and methodology of legal anthropology

What does legal anthropology study?

- Humanistic aspects of legal and state activities;
- Law ethnogenesis and legal traditions;
- Ancient legal forms and legal institutions that have survived in some peoples and ethnic groups in the conditions of modern civilization;
- Comparative analysis of legal systems and legal cultures of the past and present;
- Social prerequisites of legal behavior

Methodology of legal anthropology.

Principles:

- The principle of subject-centrism
- The principle of unity of the biological and the social
- The principle of unity of the spiritual and the material in legal genesis

Methods:

- sociological
- phenomenological
- psychological
- historical.

3. Practical aspect of anthropological approach

Basic directions of the practical aspect of anthropological approach: legal ethnology, legal traditions, legal mythology and rituals, anthropology of state power, anthropology of legal behaviour.

3.1. Legal ethnology and ethnography

Legal ethnology studies **archaic law as the stage of its development**, which the majority of modern societies have already gone through.

Jean Carbonnier says that the subject of legal ethnology may be **«the living past, if such law is applicable up to this time for a certain ethnic group on our planet»**.

The study of this "living past" is of a great importance to a lawyers-ethnologist, since the study of archaic law is carried out with the use of modern sociological methods such as inclusive observation, experiment, and others.

In addition to studying the living past in the form of ancient legal forms, legal ethnology also studies legal traditions.

Legal tradition is a category that characterizes the specificity of the ideal and material existence of law in the context of the concept of its historical development.

Sometimes the legal tradition is perceived as a **legal system, considered in the historical context**, in the temporal continuity.

Legal mythology and rituals.

A legal myth is a special phenomenon that exists on the rational and sensory levels of legal consciousness, as well as in the reflected form, in legal texts and in legal behavior, it expresses value or anti-value legal provisions and is aimed to legitimize the legal phenomena.

Legal myths are divided into **procedural (ritual) and legitimate.**

Procedural legal myths are: the ritual nature of the court session, the inauguration of the president, the oath by the public officials, etc.

Legitimate legal myths are: the myth of the people's power, the rule of law, the legal state, etc.

3.2. Anthropology of state power

Anthropology of power acts as a concept that encompasses, firstly, **a set of ideas about the existence of a man in the world of power**; and secondly, **the perception of the power by the subordinates**.

Anthropology of power **doubts the claim of the exclusively social nature of the state power** and counteracts to the spread of the ideas about the state as a purely bureaucratic and / or legal mechanism.

Not only all the traditional subject-matter sphere and infrastructure of state studies (origin and essence of the state, its form, function, state mechanism) may be subject to the thorough anthropological scientific verification, but the new aspects of the theory of state, such as **the relation between a personality and the state, image of a state in public consciousness and others**.

3.3. Anthropology of legal behaviour

Stereotypes of legal behavior, with minor exceptions, legal behavior is not arbitrary and/or unintentional, as it is conditioned by the schemes of reaction to the events which come about in a society.

Habitus is a model of behavior that is made by the social system and includes a system of **firm acquired predispositions**, which are subsequently used by the individuals for specific social practices.

The game model of legal behavior is related to one or another type of positioning of the subject (individual, person) in the legal field.

Topic 5.
The axiological approach in the methodology of legal research

1. Axiological approach in legal philosophy, theory of law, and practical jurisprudence
2. The category apparatus of the axiological approach in jurisprudence
3. Legal values and values of law
4. Intrinsic and instrumental value of law as a subject of axiological approach

Result: students will be able to identify and apply the axiological approach in legal research

1. Axiological approach in legal philosophy, theory of law, and practical jurisprudence

Axiological approach in the methodology of jurisprudence is the general strategy of research, which defines consideration of law through the prism of its compliance to the certain values, which can be ensured by means of law and be its foundation.

Legal philosophy becomes more oriented on the axiological issues, disclosure of the value essence of law and reflection over the axiological basics of legal reality.

The following essential problems are solved:

– the definition of evaluative bases of law (ontology law);
– disclosure of axiological factors in legal cognition (epistemology of law);
– the definition of role of values in the methodology of modern jurisprudence;
– description of value components in legal genesis of a man.

What is the value characteristic of law like?

- In philosophy of law the researchers distinguish several areas of value characteristics of law and their respective directions of application of the axiological approach
- Law can be considered as a social value and as a personal value
- Law can be considered from the point of view of the instrumentalist approach (what is law necessary for?) and from the point of view of a meaningful approach (which values does law contain?)
- Everything that concerns the value characteristics of law equally concerns the value characteristics of the particular legal phenomena.

2. The category apparatus of the axiological approach in jurisprudence

Fundamental category of axiological approach can be described in such a system:

– evaluation (estimation)
– value way marks
– value guidelines
– legal values
– values of law.

Estimation is an act of comparison of an existing thing to the etalon. Comparing something in legal sphere with our views about this, we estimate.

Values way marks in law are the models subject's behaviour which are formed in the frame of a specific situation and determined by the ideas of consideration, permissibility and legitimacy. **Values way marks are always very mobile**, they change in dependence of the situation, are very flexible.

Values guidelines are relatively steady, stable values way marks, which are made through a long period of time and are the components of legal consciousness. Values guidelines express a model of conduct too, but they are much more stable, unchangeable in the situations.

3. Legal values and values of law

What are legal values?

- Legal values are fundamental legal ideas that determine the most significant formal characteristics of existence of law
- The fundamental legal values include: justice, legal order, legal determinism, legal normative
- The role of legal values is to be the characteristics of the law and to legitimize it.

What are the values of law?

- The values of law are universal or social benefits that are protected and secured by law due to their significance for a person and society.
- Unlike legal values that are formal, the values of law are meaningful: they determine what law should provide
- The values of law are social-cultural: they may vary depending on the history and traditions of a particular nation.

4. Intrinsic and instrumental value of law as a subject of axiological approach

Instrumental value of law.

- The instrumental axiological approach implies the two questions: "What does law exist for?" And "how does law affect the organization of values?"
- The only significant reason for the existence of law or individual legal institutions is their ability to meet the needs of people and society
- There are four aspects of instrumental value of law: instrumental-indicative, instrumental-commensurate, instrumental-protective and instrumental-cognitive.

Intrinsic (own) value of law.

- From the point of view of its intrinsic, own value, it carries specific values and serves as a means used to provide them.
- In its structure law has the specific legal values which do not exist in any other system of social regulation
- Law is the result of the institutionalization of the system of social values, absorbing the most effective value instruments.

The intrinsic value of law receives its expression in its directions to the society (**social value of law**) and a person (**personal value of law**).

Topic 6.
Hermeneutics in legal research methodology

1. Formation of hermeneutics and its methodological techniques. The canons of hermeneutics
2. Legal hermeneutics and hermeneutics of law
3. The role of legal hermeneutics in connection with the problems of the spirit and the letter of law
4. Metaphors in jurisprudence
5. Hermeneutics in application and interpretation of law

Result: students will be able to apply the hermeneutical approach in legal research

1. Formation of hermeneutics and its methodological techniques. The canons of hermeneutics

The main chronological stages in the formation of legal hermeneutics:

a) the appearance of the interpreters of the Torah, or later of the Bible (exegesis), associated with the formation and development of **canonical law.** The purpose of exegesis is in the understanding of a text, proceeding from its own intention (empathy, directions of thinking), in explaining which aim it was written with.

b) appearance in the Middle Ages **the school of Glossators** (the representatives of this school interpreted Roman civil law), whose founder was considered an Italian lawyer **Irnerium of Bologna**, and the appearance of **the school of Post-Glossators**, the representatives of which were involved into interpretation of the norms and excerpts from the codification by Justinian, which were available in the works by glossators.

c) the formation and development of legal hermeneutics **in sphere of civil law by means of interpretation of civil-legal treaties,** from which actually the interpretation of all other types of treaties starts.

Classical hermeneutics was created by **Dr. Fr. Schleiermacher** («Hermeneutics») and **Wilhelm Dilthey** («Introduction to the science about spirit», «Hermeneutics and theory of literature» etc.). They meant to create a **special method of cognition of the cultural-historical phenomena**. This method is hermeneutics.

Hermeneutical canons of interpretation by Italian philosopher Emilio Betti:

1) the canon of immanence of hermeneutic scale

2) the canon totality and semantic cohesion of hermeneutical research (hermeneutical circle)

3) the canon of actuality of understanding

4) the canon of semantic adequacy of understanding or semantic compliance of the position of interpreter with the impulses.

2. Legal hermeneutics and hermeneutics of law

Hermeneutics studies a text. A text may be everything. The text of legal life may be included here.

Hermeneutics of law is a philosophical concept, where law is understood as a text of legal reality, understanding in legal sphere.

Legal hermeneutics is the scientific theory, which may be verified and falsified.

Legal hermeneutics may be presented on three directions:

1) the problem of «the spirit law and the letter of law».

2) the problem of understanding (general language of interpretations).

3) the problem of metaphor in legal sphere.

3. The role of legal hermeneutics in connection with the problems of the spirit and the letter of law

In the theory and practice **positive law prefers the letter law**, whereas **in natural law the researchers prefer the spirit and goal of law**. In the first case speech goes about the **literal principle of interpretation of law**, but in the second case – **about the teleological principle (its spirit)**, when the interpretation is carried out in the context of the goal.

One of the examples of such conflict between the letter of law and the spirit of law may be **collision** that is revealed in the process of interpretation. **The conflict of interpretations between the legislator and the user of law** (the executive organ,

citizen) is that the **legislator, foremost, and initially, seeks the maximum unambiquity of a text**, which is intended for the undefined quantity of indefinite persons. But the **user of law, on the contrary, seeks to interpret a legal text in his favor.**

4. Metaphors in jurisprudence

Hermeneutics studies **the problem of multiplicity of senses. Paul Riker** defines it as «... the action of sense according to which an utterance that has a changing meaning, refers to one exact thing, at the same time it refers to another thing, it also does not lose its reference to the first thing as well. In the own sense of word, this is the allegorical function of language. **The problem of metaphor in the legal sphere is talk allegorically.** Allegory means: speaking about one thing, talk about another.

In the legal sphere we use terms: the image of state, legal life, legal space, legal field etc. So, there could be different interpretations of these ideas by different interpreters.

5. Hermeneutics in application and interpretation of law

Hermeneutics has its **interdisciplinary value,** which makes its special value as the approach in jurisprudence.

General hermeneutical patterns in law:

1) any written text is the conventional system
2) the sense of a text is its target function
3) text is objectively capable to be the carrier of several ambiguous senses
4) the interpretation can be functional, and even more precisely adjusting

Hermeneutical character of law is one of the most essential of its properties, and **hermeneutical process** is the basic source and form of its development.

According to professor A. Kozlovskyj **legal science as a form the theorized means of interpretation of legal situations**

appeared from hermeneutics. More than that, we may assert, that «law is law as far as it is hermeneutical, and lawyer is a lawyer, as far as he is a hermeneutist».

Topic 7.
Civilization approach in legal research methodology

1. The concept of civilization as a methodological idea
2. Dialogue of civilizations and clash of civilizations
3. Legal pluralism as the idea of civilization approach
4. Civilization approach in comparative law

Result: students will be able to apply the civilization approach in legal research

1. The concept of civilization as a methodological idea

In the scientific meaning civilization can be understood in three basic senses:

1) as some unity of all mankind in the planetary sense, global structure of the world;
2) stage in the world development, associated with its achievement of the certain level of sociality;
3) the societies localized in space and time, representing holistic system, i.e. possessing their original economies, religions, legal systems and others.

So, civilization is defined as: highly organized society marked by advanced knowledge of trade, government, arts, science and often time written language. Civilization is community characterized by elements such as a system of writing, development of social classes, and cities.

2. Dialogue of civilizations and clash of civilizations

In modern science two most significant and opposing paradigms in the theory of civilizations are considered. They directly influence the development of knowledge about law.

The first is by **Arnold Toynbee,** it is known as the **dialogue of civilizations**. The second whose author is **Samuel Huntington** is titled as the **collision of civilizations**.

Toynbee wrote that civilizations **do not exist apart from each other,** but they constantly exist in the state of interaction, dialogue. More than that, this dialogue is one of the most important parts of civilizations, the component of their life.

Opposing to Toynbee, Huntington claimed **that the dialogue of civilizations is only a particular case of what was happening** in the real world. The central idea of the concept of collision of civilizations is really pragmatic: each civilization, **regardless of on which stage of development it is, thinks of itself as of the center of the world and represents its vision of history**. Naturally, in such situations conflict is unavoidable.

3. Legal pluralism as the idea of civilization approach

Civilization approach is a general strategy of the research, directed on studying law and state in their civilization context. **Civilization approach** is a very close to legal pluralism.

Firstly, we should base our ideas on the supposition that **law and state in principle are always unique and incomparable. Secondly**, **description is the basic method,** used in the limits of civilization approach. Usually, the followers of civilization approach do not seek to **identify patterns of one or another law.** They rather speak about the special features which can be described. **Thirdly**, civilization approach is always used as the preliminary knowledge for any subsequent knowledge. So it can be supposed to be a kind of pre-approach, or the setting, of the most general and widest coverage.

4. Civilization approach in comparative law

On the foundation of civilization approach we suppose that each state and each legal system are unique, since they are the

products of the unique culture. Surely, there are some similarities, which we see making comparisons of legal systems, they are inevitable, after all law is law. In one civilization legal systems can have sets of similar traits which are defined by belonging of this legal system to something more general.

And the quintessence of the question is not in legal systems, the center of the question is law. Civilization approach makes one think that French law, English law, Ukrainian law, Japanese law, and others are completely unique phenomena which **inevitably have their own civilization specificity.**

Topic 8.
Instrumental level of legal research methodology: system of methods

1. The concept, features and significance of research methods
2. Philosophical methods in legal research and their application
3. General scientific methods in legal studies
4. Specific scientific methods in legal research
5. Special methods in legal studies

Result: students will be able to solve scientific problems in the area of law based on the application of general, specific and special methods

1. The concept, features and significance of research methods

Concept of scientific method

Method is an algorithm for solving a practical or scientific problem

- A scientific method is an algorithm for solving a scientific problem that is adequate for the research problem and that corresponds to the features of scientific knowledge

- A scientific method is the highest form of scientific knowledge, since it is the knowledge of how to receive new knowledge
- **Features** of a scientific method are: adequacy, algorithmic character, efficiency, rationality.

There are four levels of methods. Philosophical, general scientific, specific and special.

2. Philosophical methods in legal research and their application

Philosophical methods are adequate for philosophical-legal research, as well as for those studies where fundamental questions about the essence of law and its links with a man are raised.

On very few occasions, philosophical methods may be adequate at the level of branch research if they are used to form fundamentally new concepts.

The most common philosophical methods include: dialectical, phenomenological, existential, etc.

3. General scientific methods in legal studies

Among **the general scientific methods** are those methods which are relevant for the problems of any area of science or for the significant group of related areas of sciences.

The application of general scientific methods is, as a rule, a guarantee of the scientific character of the results obtained. Those studies in which it is impossible to apply general scientific methods, are not scientific research.

Some general scientific methods can be judicialized, that is, they can acquire new characteristics related to their application in a specific sphere – legal sphere. For example, the comparative legal method.

The most common general scientific methods are observation, experiment, extrapolation, modeling, comparison, systematic method, classification, etc.

4. Specific scientific methods in legal research

The specific scientific methods include the methods that are used by one particular science.

It is believed that one or another sphere of knowledge becomes a science at the moment when it receives its method.

Jurisprudence does not have its own methods, and it has not developed a single own method.

Comparative-legal, normative and dogmatic methods claim their status of specific scientific methods in jurisprudence.

5. Special methods in legal studies

Special methods are those methods that are used or created for a particular study or in order to solve a specific task.

Since special methods are practically never created for the solution of legal problems, they are borrowed from other sciences.

Sometimes special methods are called the variations of general scientific methods adapted for the analysis of specific phenomena, for example, the method of analysis of the corpus delicti.

Topic 9.
Language of law and category apparatus of legal research

1. The concept and features of the language of law.
2. Legal categories and concepts
3. Concept and purpose of legal technique
4. Types of legal technique

Result: student will be able to use the logical rules for constructing concepts in a legal study, delimit legal categories and concepts, and build a category apparatus of legal research

1. The concept and features of the language of law

The issue of language of law is closely linked to the question of legal doctrine and its essence.

It is though that the interest to logical and linguistic characteristics of law is connected with positivist's legal doctrine. The founder of the linguistic positivism in the sphere of law was Herbert Hart. In his belief the task of the positivist law studies is the critics of the language of law. As a language is characterized with indistinctness, this feature of it is also attributed to the language of law.

The features of the language of law.

The language of law is characterized by:

- briefness of the utterances
- exactness of the legal terms
- specificity of the legal language
- independent genre of a language
- belonging to the formal style.

2. Legal categories and concepts

The category (from the Greek **"decision", "utterance")** is now commonly used to refer to the *"class", "type", "sort".* It implies "chunking" the object into mutually excluding and mutually complementing parts. In other words, any **concepts** that are referred to as categories should necessarily fulfill an important **analytical** function and are connected to classification.

Categories are not the ultimately wide concepts (for instance the world, the Universe, everything), because the wide concept do not complete the analytical function, they do not bring any specific information, but serve as the starting point for cognition.

So, **categories are such concepts** that are close to the wide notions, but divide the notion without any exception into the mutually excluding and mutually causing parts.

The example of dual "chunking" of the world by means of categories is: the notion of material and ideal, cause and consequence, contents and form, and others.

3. Concept and purpose of legal technique

Legal technique is a notion that is close to the concept of **legal writing**. In the foreign legal literature there is a special term "legal writing" which implies the set of rules, means, methods and techniques of creating and systematization of legal documents. Legal writing is exploited by lawyers as an external form of expression of legal points, rights and duties and legal norms. Thanks to legal writing it is possible to formalize legal analysis and intrinsic contents of law.

Legal technique is considered as one of the elements of law-making (**in its narrow meaning**). In this context legal technique embraces the system of rules and means for preparation of the most perfect in their form and structure projects of the normative acts, which provide the maximum and the most exact correspondence of the form of normative prescripts to their contents.

Apart from this, there is **a wider understanding of the notion of legal technique**. It is a set of rules, means, techniques of preparation, making, composition of any legal documents, of their systematization and accounting with the purpose of making them clear, comprehensive and efficient.

4. Types of legal technique

There are such types of legal technique, as:

1) **the technique of legal norm-making.** This is a set of rules and means of formation, composition of the contents and structure of normative acts and other sources of law, the

peculiarities of the use of language of law, legal terms and constructions in this process.

2) **the technique of systematization and accounting of normative-legal acts and other sources of law**. This is the set of rule of sequencing the normative acts in a particular order depending on different types of systematization (codification, consolidation and incorporation).

3) **interpretational technique or the technique of interpretation of legal norms**. This is a set of rules and means of interpretation of legal norms in order to explain their actual contents.

4) **technique of law implementation and law application**. This is a set of rules of forming and composing individual legal acts. The special significance is given to the rules of law application in the court and to the techniques of making and forming of judicial verdicts.

4. PLANS OF PRACTICAL COURSE

Topic 1.
The concept and content of legal research methodology

1. Concept of legal studies and jurisprudence
2. Methodology as a conceptual center and an instrument of jurisprudence
3. Methodology of legal research as a system, its components
4. Conceptual and instrumental levels of the legal research methodology

Topic 2.
The conceptual level of legal research methodology

1. The concept of paradigm and its significance in the methodology of legal research
2. The classical paradigm of jurisprudence
3. The nonclassical paradigm of jurisprudence
4. The post-nonclassical paradigm of jurisprudence

Topic 3.
Types of legal doctrines as research programs

1. The concept of a research program
2. The concept and features of the legal doctrine as a research program
3. Pluralism of legal doctrines in modern legal research methodology

3.1. Positivistic legal doctrine and its basic postulates
3.2. Natural law doctrine and its types
3.3. Sociological legal doctrine and its types
3.4. Integrative legal doctrine and its types

Topic 4.
Anthropological approach in legal research methodology

1. Anthropological approach and legal anthropology
2. The subject and methodology of legal anthropology
3. Practical aspect of anthropological approach
3.1. Legal ethnology and ethnography
3.2. Anthropology of state power
3.3. Anthropology of legal behaviour

Topic 5.
The axiological approach in the methodology of legal research

1. Axiological approach in legal philosophy, theory of law, and practical jurisprudence
2. The category apparatus of the axiological approach in jurisprudence
3. Legal values and values of law
4. Intrinsic and instrumental value of law as a subject of axiological approach

Topic 6.
Hermeneutics in legal research methodology

1. Formation of hermeneutics and its methodological techniques. The canons of hermeneutics
2. Legal hermeneutics and hermeneutics of law
3. The role of legal hermeneutics in connection with the problems of the spirit and the letter of law
4. Metaphors in jurisprudence
5. Hermeneutics in application and interpretation of law

Topic 7.
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Instrumental level of legal research methodology: system of methods

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Language of law and category apparatus of legal research

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4. Types of legal technique

5. INDIVIDUAL TASKS

5.1. TASKS FOR INTERACTIVE TESTING OF KNOWLEDGE

Topic 1. The concept and content of legal research methodology

1. Which of the groups of legal science Methodology of Jurisprudence belongs to?
   A. general theoretical
   B. theoretical and historical
   C. branch
   D. international law

2. The methodological function of general theoretical jurisprudence is expressed in:
   A. the fact that the achievements of general theoretical jurisprudence are tools of knowledge for other legal sciences
   B. the fact that the state and legal phenomenon are considered as elements of open systems
   C. cognition and explanation of phenomena, processes of state and legal life
   D. prognostication the further development of the state and law

3. The methodology is recognized as:
   A. system of principles of scientific research

B. system of approaches, methods and principles of scientific research
C. system of research methods
D. conceptual ideas of modern jurisprudence

4. What does the instrumental level of the methodology of jurisprudence include?
A. concepts, approaches and principles
B. hypotheses, logical rules, notions
C. methods, techniques and facts
D. all the above mentioned

5. The conceptual level of the methodology of legal science includes:
A. concepts, hypotheses, theories, approaches
B. values of law and legal values
C. methods, techniques and facts
D. concepts, methods, approaches

6. What is the central part of the methodology:
A. ideas
B. methods
C. hypotheses
D. principles

7. The approach in the methodology of jurisprudence is:
A. the general direction of research, due to a certain fundamental idea through which the process of understanding the law is carried out
B. a set of principles
C. methods of scientific research of law
D. a set of ideas

8. The principles of cognition are:
A. fundamental ideas
B. prolegomenon of law
C. starting points of the theory of cognition, which are required the person to perform certain actions
D. logical constructions

Topic 2.
The conceptual level of legal research methodology

1. The paradigm is:
A. concept of cognition
B. model of problem formulation and its solution, which prevails during a certain historical period in the scientific community
C. a set of legal phenomena
D. a set of principles

2. Which principles refers to the system of principles of classical legal science paradigm?
A. historicism, objectivity, abstracting from history, pluralism
B. monism, historicism, objectivity, supplementary
C. monism, rationality, determinism, historicism
D. interdisciplinary, inter-subjectivity, dialogizm

3. The formation of a modern paradigm in the methodology of jurisprudence is associated with:
A. the gradual development of the classical paradigm
B. the dominance of the ideas of scientism
C. the development of the ideas of subjectivism and combination of rational and irrational
D. the emergence of irrational thinking

4. Principles of modern paradigm of jurisprudence:
A. abstraction from history, subjectivity, a combination of rational and irrational
B. historicism, subjectivity, a combination of rational and irrational
C. abstraction from history, subjectivity, a combination of rational and irrational
D. supplementary, monism, determinism

5. Thomas Kuhn means normal science as:
A. period of research, when scientists do not take into account previous research
B. period of research, when scientists increase the potential of previous achievements
C. period of science, when scientists take into account modern research
D. revolutionary period in science

6. Thomas Kuhn is the author of the definition of:
A. method
B. principle
C. research program
D. concept

7. The postmodern period corresponds to:
A. situations of transition to the information society
B. transition to a post-industrial society
C. post-industrial society
D. agrarian society

8. The principle of objectivity provides:
A. recognition of the objectively real existence of the object of knowledge

B. recognition of the subjectively real existence of the object of knowledge
C. the existence of permanence
D. the existence of objective truth

Topic 3.
Types of legal doctrines as research programs

1. We can use the statement "the law is a legitimate system of norms" to characterize:
   A. the concept of natural human rights
   B. etatism
   C. neonormativism
   D. communicative theory of law

2. Research program is:
   A. a series of alternating theories combined with a set of fundamental ideas and methodological principles.
   B. scientific concepts
   C. a set of paradigms
   D. communicative theory of law

3. Structure of research program includes:
   A. methods, paradigms
   B. assumptions and concepts
   C. "hard core", hypotheses
   D. concepts, programs

4. Who is the developer of the of research programs existence:
   A. T. Kuhn
   B. M. Weber
   C. I. Lakatos
   D. H. Hart

5. Legal understanding is:

A. comprehension or rethinking all of which is associated with the law

B. reflection in jurisprudence of the fundamental characteristics of legal reality

C. understanding of law as a social phenomenon

D. legal consciousness of the individual and society as a whole

6. Understanding of law is:

A. the process of forming the image of law on the basis of pre-understanding and the use of knowledge, skills, abilities

B. legal consciousness of the individual and society as a whole

C. the process of mastering of legal reality

D. reflection in jurisprudence of the fundamental characteristics of legal reality

7. Integrative understanding of law is when:

A. law reflects the state reality

B. everything valuable from different concepts of legal understanding is counted and combined

C. the law is understood through the prism of society

D. the fundamental characteristics of the legal reality is reflected in law

8. Types of the legal understanding:

A. civilizational, anthropological, integrative

B. positivist, natural law, sociological.

C. instrumental, conceptual

D. hermeneutic, axiological

Topic 4.
Anthropological approach in legal research methodology

1. What is the subject of studying legal ethnography?
   A. the legal life of archaic societies
   B. the legal traditions of society
   C. human rights
   D. informal law

2. Legal anthropology is characterized as:
   A. modern stage of civilization development with growing integrity of the global community
   B. science about human in its legal manifestations, dimensions, characteristics which study the legal forms of life from archaic to modern
   C. ability of law to serve as a goal and means to meet socially impartial, progressive needs and interests of individuals and society as a whole
   D. ability of law to have its own value which in a democratic society becomes a dominant value

3. Anthropological approach allows:
   A. to trace and to identify a historical socio-cultural context in which some or other political and legal phenomena arise
   B. to reveal the essence of relations which have developed in human society and which later formed the basis for different legal relationships within different legal systems
   C. to emphasize that law has its own value
   D. to formulate a generalized type of state and law, political and legal ideal

4. Legal acculturation is:

A. an universal, due to globalization processes, relationship between the legal cultures of national legal systems which is expressed in mutual enrichment, exchange of valuable structural elements of legal culture

B. loss of the main (essential) part of the native (domestic) culture

C. borrowing by society of sociological and cultural forms that emerged in another country or in another era

D. perception of one cultural phenomenon, one culture through the eyes of another

5. Reception is:

A. restoring of something to its original form, in particular, works of art, monuments of culture

B. revival of the system of law which existed previously (a legal system in whole is being integrated to culture as an element of another, more ancient culture).

C. mutual influence of cultures when in the process of intercultural contacts technologies, patterns, values of other cultures are being assimilated

D. loss of the main (essential) part of the native (domestic) culture

6. The subject of anthropology of law acts as:

A. functioning of the state

B. properties and essence of law

C. basic general regularity of the origin, development, and functioning of the relationship between human and law

D. valuable characteristics of law

7. What does the legal ethnology study:

A. valuable characteristics of the law and state

B. legal mentality, legal culture, civilizations
C. dynamics of development, value changes, tasks and regulation of the law of predominantly non-industrial societies
D. development of industrial communities

8. What do myths give us:
A. fundamental explanation for the universe creation, birth of life in society, and they determine the basic rules that govern this life
B. ideas about the essence of the state and law
C. the dynamics of the development of the values of law
D. knowledge of the state forms

Topic 5.
The axiological approach in the methodology of legal research

1. What belongs to the system of legal values?
A. human dignity
B. property
C. jurisdiction
D. liberty

2. Axiology is:
A. the doctrine of values
B. the doctrine of law as a sphere of human spiritual life
C. the doctrine of myths in legal and state life
D. the doctrine of the spirit and letter of law

3. Axiological approach to the methodology of jurisprudence is:
A. approach to the analysis of historical facts and phenomena the essence of which is to consider history

as a science of social man who operates in time, the historical space

B. general research strategy that determines the consideration of law through an inseparable link with the state

C. general research strategy that identifies consideration of law in the light of its compliance with certain values which may be provided by law and be its foundation

D. science about human in its legal manifestations, dimensions, characteristics, which study the legal forms of life from archaic to modern time

4. The value of law is:

A. ability of law to serve as a goal and means to meet socially impartial, progressive needs and interests of individuals and society as a whole

B. kind of general culture which is a system of values reached by mankind in the field of law and reveals the legal reality of the society

C. stable value orientations, which are being produced over a long period and are components of the legal consciousness

D. strategy of the society development

5. The instrumental value of law is expressed by the fact to:

A. identify the difference between the levels of legal information

B. identify the difference between values and anti-values

C. distinguish between the intrinsic value of law and the social value of law

D. identify the difference between levels of legal consciousness

6. The intrinsic value of law directly depends on:
A. legal education, self-education of the individual and society as a whole
B. meeting the needs of different persons
C. stage of the development of society, stage of civilization
D. the nature of political regime

7. The basic categories of the axiological approach can be represented in the following system:
A. legal values, values of law, evaluation, value way marks, value guidelines
B. socialization, legal ideology
C. legal consciousness, legal understanding
D. legal psychology, legal culture

8. The value of law is:
A. usefulness
B. chaos
C. equity
D. justice

Topic 6.
Hermeneutics in legal research methodology

1. Which one is the metaphor in law?
A. norm of law
B. legal state
C. legal space
D. legal culture

2. The legal hermeneutics was developed in the works by:
A. K.F. von Savigny
B. I. Kant
C. M. Weber
D. T. Kuhn

3. F.Schleiermacher considers being the subject of hermeneutics:
A. hermeneutic texts
B. texts that are evaluative
C. texts that are monuments
D. axioms of law

4. "Hermeneutic circle" is:
A. interpretation which is the basis of the hermeneutic approach
B. hermeneutic principle
C. transition from general to partial when disclosing the text content
D. transition from partial to general when disclosing the text content

5. The hermeneutics of law is:
A. a separate science
B. philosophical concept
C. school of the philosophy of law
D. method in the legal science

6. In the theory and practice of positive law scientists prefer:
A. the spirit of law
B. the letter of legislation
C. the spirit of legislation
D. the letter of law

7. Hermeneutic approach is an approach by which:
A. texts are deciphered
B. information is collected
C. signs are interpreted
D. legal experience is accumulating

8. H.-G. Gadamer considered that the hermeneutic process consists of:
A. application, understanding, interpretation
B. informing, explaining, interpreting
C. understanding, using, evaluation
D. informing, using, application

Topic 7.
Civilization approach in legal research methodology

1. Which of the key features does not belong to the law of European civilization?
A. relative autonomy of law in relation to politics and religion
B. the key role of the court in providing the functioning of the legal system
C. the priority of special-permissive type of legal regulation
D. legal autonomy of a person

2. The most common form of civilization is:
A. organized society which is united by a common mentality, legal culture and expresses certain social and cultural relationships, values
B. community of people which is united by basic spiritual values and ideals
C. society in which dominates the diversity of views on the economy, culture, science, art, where each of the members of this society has his/her spiritual values and ideals
D. the societies localized in space and time, representing holistic system, i.e. possessing their original economies, religions, legal systems etc.

3. The type of civilization allows to:

A. designate specific features which are typical for many societies

B. highlight the values of law which are inherent to different societies

C. identify the characteristic features of society

D. determine place of society

4. Local civilizations:

A. are restricted areas of individual regions or countries and express the cultural and historical, ethnic, religious, economic and geographic features of particular countries, groups of countries, ethnic groups which are linked by common fate

B. are characterized by planetary scales

C. are typical for a particular state where society has a high level of culture, legal consciousness, historical and economic development

D. express religious, economic and geographical features of ethnic groups

5. A. Toynbee believed that civilizations:

A. are constantly in interaction, dialogue staying

B. are constantly in clash staying

C. exist separately

D. are in a staying of constant deculturation

6. Legal acculturation is:

A. the process of loss by legal culture of its identity due to excess of borrowings

B. the process of imposing legal institutions from other legal systems

C. the process of loss of its identity by the legal culture

D. the process of creation of the total scope, general language of communication in the legal field

7. The main idea of the concept of clash of civilizations says:
A. that each civilization sees itself as a center of the earth and presents its vision of history
B. that there's stadiality of civilizations
C. that there's concept of local civilizations
D. that all civilizations are dying

8. The specificity of the civilizational approach is expressed:
A. in search of inner determinants which create system and structural links between each other
B. in search of external determinants that have a systemic impact on the law and state
C. in presence of evaluative factors in the search for truth
D. in a general strategy of the research, directed on studying law and state in their civilization context

Topic 8.
Instrumental level of legal research methodology: system of methods

1. We should use (first of all) to identify systemic links, content and form of the legal terms:
A. method of analogy
B. dogmatic method
C. dialectical method
D. comparative-legal method

2. General scientific methods of knowledge of law include:
A. dialectical method, method of analogy, normative method

B. systemic, phenomenological, comparative legal methods
C. induction, deduction, modeling
D. dialectical, phenomenological, existential

3. Synthesis is:
A. cognition by combination of disparate concepts into whole one
B. cognition through the division of the whole into parts
C. cognition based on replacing a specific object of research with other
D. deduction

4. The essence of dialectics in law is manifested by:
A. consideration of phenomena and objects as separate and immutable structures
B. contradictions of views on phenomena, as well as in their further development
C. establishing and substantiating the links between objective and subjective aspects of legal reality
D. comparison of legal systems

5. The philosophical methods of legal research include:
A. synthesis, system analysis
B. dogmatic, comparative
C. dialectical, phenomenological
D. deduction, induction

6. The comparative law method is used to:
A. clarify the common and difference between public legal phenomena within one or more legal systems through their comparison, distinction by any feature

B. create and improve system of legislation, ensure the similar legal norms enforcement and the appropriate regime of legality
C. application of knowledge obtained in the study of one legal phenomenon to other phenomena
D. consideration of phenomena and objects as separate and immutable structures

7. The special legal methods include:
A. method of the corpus delicti analysis
B. cultural logical, historical, mathematical
C. dogmatic, comparative, metaphysical
D. dialectical, systemic, normative

8. The specific scientific methods of jurisprudence include:
A. dogmatic, normative, comparative
B. metaphysical, systemic, phenomenological
C. classification, modeling, analogy
D. analysis, synthesis, deduction, induction

Topic 9.
Language of law and category apparatus of legal research

1. The language of law is a functional variety of:
A. literary language
B. language of jurisprudence (legalese)
C. legal language
D. state language

2. The official and business style of speech are used in the:
A. notary, office work
B. mass media
C. legal science and education
D. TV

3. Informal communication better represents such specific features of conversational style as:
   A. stylistic homogeneity, rational brevity
   B. spontaneity (unpreparedness), situationality
   C. accuracy and certainty
   D. neutrality, standardization

4. The accuracy and clarity of the content of a legal document are to be combined with its:
   A. accessibility
   B. quality
   C. spontaneity
   D. situationality

5. The legislative technique:
   A. is a kind of model construction of rights, duties, responsibility
   B. is a set of different terms which are used in the texts of legal documents (legal acts)
   C. is a set of rules, techniques, drafting methods, and formalization of legal documents, their systematization and record
   D. is established schemes in which the normative material is embodied

6. The technique of presenting the will of the legislator previews:
   A. absence of two-valued and ambiguous terms in the text of a legal document
   B. compliance with the syntactic, stylistic, linguistic and terminological rules
   C. situationality, ease, freedom in expressing thoughts and feelings
   D. expressive and emotional saturation

7. Sociolinguistic aspects of law relate to the relationship between:
   A. language and legal communication
   B. the letter of law and the spirit of law
   C. interpretation of legal texts and clarification of the meaning of legal concepts
   D. language and society

8. The main object of legislative technique is:
   A. the text of legal acts
   B. the legal practice
   C. the legal concepts
   D. the legal categories

5.2. TOPICS OF ESSAYS AND PRESENTATIONS

Topic 1.

1. Difference between science and other spheres of reality cognition
2. Methodological function of general theoretical jurisprudence

Topic 2.

1. Reasons for the formation of nonclassical and post-nonclassical paradigms of legal science
2. Monism and pluralism. Objectivity and subjectivity… etc.

Topic 3.

1. Difference between legal understanding (legal doctrine) and understanding of law
2. Features of axiological-normative legal understanding

Topic 4.

1. Notion of the legal myth and its kinds
2. Legal traditions of Ukraine

Topic 5.

1. Hierarchy of values in Ukrainian law
2. Axiological approach in comparative jurisprudence

Topic 6.

1. Difference between understanding and pre-understanding of law
2. Hermeneutics in raising the legal status of lawyers

Topic 7.

1 Difference between concepts of the dialogue of civilizations and the collision of civilizations
2. Civilizational approach in the branch jurisprudence

Topic 8.

1. Process and causes of the appearance of judicialized methods
2. System method in jurisprudence

Topic 9.

1. The language of law in lawmaking
2. Legal technique in the field of private law

6. REVIEW QUESTIONS

1. The concept and content of legal research methodology
2. Concept of legal studies and jurisprudence
3. Methodology as a conceptual center and an instrument of jurisprudence
4. Methodology of legal research as a system, its components
5. Conceptual and instrumental levels of the legal research methodology
6. Peculiarities of legal research methodology
7. The conceptual level of legal research methodology
8. The concept of paradigm and its significance in the methodology of legal research
9. The classical paradigm of jurisprudence
10. Nonclassical paradigm of jurisprudence
11. The post-nonclassical paradigm of jurisprudence
12. Distinguish between classical and modern legal research methodology
13. Types of legal doctrines as research programmes
14. The concept of research programme
15. The concept and features of legal doctrine as a research programme
16. Pluralism of legal doctrines in modern legal research methodology
17. Positivistic legal doctrine and its basic postulates
18. Natural law doctrine and its types
19. Sociological legal doctrine and its types
20. Integrative legal doctrine and its types
21. Anthropological approach in legal research methodology
22. Anthropological approach and legal anthropology
23. The subject and structure of legal anthropology

24. Pluralism of legal cultures in the prism of legal anthropology
25. Legal ethnology and ethnography
26. Anthropology of a state power
27. Anthropology of legal behaviour
28 Practical aspect of the anthropological approach
29. The axiological approach in the methodology of legal research
30. The category apparatus of the axiological approach in jurisprudence
31. Intrinsic and instrumental value of law as a subject of axiological approach
32. Legal values and values of law
33. Axiological approach in legal philosophy, theory of law, and practical jurisprudence
34. Axiological approach in comparative jurisprudence
35. Hermeneutics in legal research methodology
36. Formation of hermeneutics and its methodological techniques
37. The canons of hermeneutics
38. Legal hermeneutics. Law as a cultural code
39. The role of legal hermeneutics in connection with the problems of the spirit and the letter of law
40. Metaphors in jurisprudence
41. Hermeneutics in application and interpretation of law
42. Civilization approach in legal research methodology
43. The concept of civilization as a methodological idea, typology of civilizations
44. Dialogue of civilizations and clash of civilizations
45. Legal pluralism as the idea of civilization approach
46. Civilization affiliation of Ukrainian law and state
47. Civilization approach in comparative law

48. Instrumental level of legal research methodology: system of methods
49. The concept, features and significance of research methods
50. Philosophical methods in legal research and their application
51. General scientific methods in legal studies
52. Specific scientific methods in legal research
53. Special methods in legal studies
54. The concept and features of the language of law
55. Areas of application of the language of law
56. Legal categories and concepts
57. Concept and purpose of legal technique
58. Types of legal technique

7. LITERATURE

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МЕТОДОЛОГІЯ ЮРИСПРУДЕНЦІЇ

Інтерактивний посібник

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