

# ГОСПОДАРСЬКЕ ПРАВО

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## THE THEORY OF AGRICULTURAL LAW'S LEGAL NATURE

*The system of law is an internal structure of law objectively predetermined by the system of social relationships and which comprises interdependent norms that are logically divided into fields, subfields and institutes. A subject matter of legal regulation is usually seen as a defining criterion for a system of law. It is the main objective basis for division of legal norms in legal fields. It is supplemented by the method of legal regulation.*

**Key words:** law, legal nature, system of law, normative regulation.

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*Проблеми розвитку сучасного аграрного права*

*У статті розглядається проблема розвитку аграрного права. Аналізується місце і роль аграрного права в догматі розвитку українського права і законодавства. Систематизуються теоретичні основи: принципи і методи аграрного права. Робляться пропозиції щодо подальшого розвитку аграрного права.*

**Ключові слова:** право, аграрне право, система права, законодавче регулювання.

**Д. А. Беззубов, Ю. В. Корнеєв**

*Проблемы развития современного аграрного права*

*В статье рассматриваются проблемы развития аграрного права. Анализируется место и роль аграрного права в догмате развития украинского права. Систематизируются теоретические основы: принципы и методы аграрного права. Делаются предложения про дальнейшее развитие аграрного права.*

**Ключевые слова:** право, аграрное право, система права, законодательное регулирование.

Law is a very complex and coherent system. There are two main definitions: the system of law and legal system. These terms are not equal and they should be distinguished as the term «legal system» is wider than the «system of law».

Legal system is a complex of interdependent and coordinated legal measures, aimed at regulation of social relationships and legal phenomena that rise from such regulation. It includes the following components: legal norms, principles, institutes, legal consciousness, legislation, legal relations, legal bodies, legal culture, law order, etc. [1, 36].

A state has its own legal system. It is historically predetermined that every state has its legal customs, traditions, legislation, jurisdictional bodies, formed specifics of legal mentality, culture, which are united under an umbrella term of «legal system». **Being an inseparable element of legal culture** in each state the legal system is determined by historical and geographical factors as a part of the state's social system. Unlike the legal system, the system of law is a legal category that defines internal structure of law of any country. In Ukraine the internal structure of law is defined as its system.

The system of law is an internal structure of law objectively predetermined by the system of social relationships and which comprises interdependent norms that are logically divided into fields, subfields and institutes.

Division of the system of law into fields is based on certain criteria. These are: subject matter (material criterion) and method (legal criterion) of legal regulation.

**The subject** matter of legal regulation is a virtual separation of a certain number (totality) of social relationships that have a similar characteristic. This allows generalising legal norms in such a normative unit as the field of law [2, 48].

For instance, the subject matter of environmental law is a separated group of social relationships embodied in rational use of natural resources and environmental protection. The subject matter of agricultural law is social relationships in the field of organization and activities of agricultural goods producers. The subject matter of land law is social relationships in the field of rational use and protection of lands. The subject matter of administrative law is managerial relationships, labour law – labour relationships, etc. Each field of law has its own relatively separated area of regulation.

A subject matter of legal regulation is usually seen as a defining criterion for a system of law. It is the main objective basis for division of legal norms in legal fields. It is supplemented by the method of legal regulation.

**The biggest element** of the system of law is a field of law.

The field of law is a relatively independent totality of legal norms which regulates qualitatively homogeneous field of social relations with a specific method of legal regulation.

The following fields of law exist in Ukraine: constitutional law, administrative law, labour law, civil law, family law, criminal law, agricultural law, land law, environmental law, international law, commercial law, financial law, etc. A field of law may include subfields, i.e. corporate law is a commercial law's subfield, intellectual property law – civil law's subfield, banking and budget law – financial law's, etc.

Legislative system is a system of all normative legal acts organised in a certain way that is a form of legal norms' existence, means of providing them with objectiveness, definitiveness and uniformity. Unlike the system of law, a legislative system characterises its form, external expression, so it is an external system of legislation which comprises of interrelated statutory instruments in a certain sphere of public life. It is formed through legislative process and systematisation of legal acts [3, 69].

The system of law and the system of legislation correlate as the meaning and the form. There are differences between the system of law and the legislative system which are seen from their structural elements, meaning and scope [4].

1. The system of law is invisible as it reflects internal structure of law and the legislative system is visible external form of the system of law.

2. The system of law is a totality of legal norms and the legislative system is a totality of statutory acts.

In the system of law legal norms are logically divided in fields, subfields and institutes. As a rule, norms of legal fields are building blocks out of which (in different sets and combinations) consists a certain field of legislation. It is possible that a field of law exists but there is no field of legislation (financial law, the right to social service, etc). In this case fields of law are not codified and normative material is dispersed over several legal acts which need unification. In the legislative system statutory acts are united according to fields of legislation which are divided into institutes of legislation. Fields of legislation are created both by taking field specialisation principle and not doing that: field of legislation may contain norms of different fields of law (complex fields) or be created on the basis of an institute or subfield of law. It is possible that a field of legislation exists without field of law (customs law, etc.).

3. The system of law consists of fields of law which have their subject matter and method of legal regulation and the legislative system includes fields of law that have no method of regulation and the subject matter of regulation is not always homogeneous as of fields of law.

4. The system of law has only field, horizontal structure but the legislative system may have either horizontal or vertical (hierarchical) structure. In federative states both federal law and the law of its subjects (vertical structure) exist.

5. Primary element of the system of law is the legal norm and its structure: assumption, disposition, sanction, and the primary element of the legislative system is an article of the law which has normative prescription which as a rule doesn't contain all of the three elements of the logical legal norm. Normative prescription often consists of only an assumption and a sanction; disposition may be contained in another article of the law (reference presentation) or another legal act (blanket presentation). Laws that include norms of different fields of law are supplied with sanctions which are expressed in other legal acts (i.e. property laws, business laws, etc.).

6. The system of law is formed objectively, according to existing social relationships and the legislative system is formed as a result of task-oriented activities of empowered bodies so it includes a certain degree of subjectivity.

7. Structural elements of the system of law do not have external characteristics common to laws: titles of sections, articles, chapters. Structural elements of the legislative system (normative legal acts) as a rule have titles of sections, chapters and articles. They may contain preambles, description of aims and principles, general normative definitions that comprise the body of law, etc.

Under conditions of transition towards a free market economy a great need for development and performance of numerous legal, organisational, economic, scientific, social and other measures has appeared in Ukraine. The need has the aim of providing such a development of agricultural sphere of economy which would meet the needs of the country and provide its food security.

Solving these issues is impossible without well-grounded and well-balanced agricultural policy. The strategic aim of such a policy is formation of a social layer of real land owners, social and economic development of rural areas, implementation of agricultural and land reforms.

Agricultural transformations need appropriate legal support, normative regulation in the sphere of social relations. Successful agricultural policy, land and agricultural reforms are a necessary and important prerequisite for establishing economic order in society. This creates the need for revision and perfection of laws, Ukrainian legislation in general and agricultural sector legislation in particular.

Law and legislation fields in agricultural sector should be distinctly divided. E.g. Agricultural legislation as a complex field of legislation is a system of internally coordinated legal norms that regulate agricultural (land, property, labour, management) relationships in the sphere of agricultural production. It is often lays at the basis of agricultural complex regulations, but at the same time the latter incorporates other legal norms (e.g. environmental, land legislation, etc).

Based on this we can work out a definition for the system of legislation and law of agricultural complex which is an amount of normative material which is logically and consistently placed according to the fields of law, institutes of law, norms of which together establish main principles, forms and order of actions of legal and physical entities, regulate relations that emerge in agricultural complex [4].

Characteristics of every legal area including agricultural law are harmonisation and likeness of normative material which is predetermined by social-economic and organisational legal factors. Taking that into account we are able to make a definition for the system of agricultural law. It says that system of agricultural law is a totality of normative material which is logically and consistently formed according to institutes of law and which establishes main principles, forms and due process of agricultural activities of legal entities and private individuals, regulates relations between them, them and the state in the process of farming, production, recycling and realisation of agricultural products.

Agricultural law as a system of norms regulates a complex of different social relations that emerge during organisation of the agricultural production process. Within this internally coordinated system legal norms, blocks and elements are hierarchically placed.

Agricultural law as a systemised field regulates certain group of complex social relations and comprises an integrated field of law. It is connected with commercial, civil, administrative, labour, land laws, etc. without which it is impossible to regulate a complex of agricultural contractual relationships, of agricultural businesses' creation and registration. So, agricultural contractual relationships are regulated by specific norms of civil law; reimbursement of damages related to crop loss – by norms of administrative law [5, 44].

Regulation of labour relationships in agriculture only by norms of agricultural law is also impossible. For instance, norms of labour law on nullification of provisions of contracts of employment that worsen conditions for workers in comparison with Ukrainian labour law also cover labour relationships in agriculture.

The «agricultural law» term encompasses all interrelated but not equal definitions. Agricultural law should be perceived as a field of law, field of legal studies and teaching subject [5].

A characteristic of agricultural law is, primarily, existence of complex institutes of law. The most prominent of them is the institute of land ownership (mainly private). It is a result of radical reforms in agriculture – land and agricultural, emergence of agricultural producers, entrepreneurial basis for their activities.

A new institute of share land has a complex land-agricultural legal nature. It was legally established under the Land Code in 1992 [6] and is widely proclaimed by several presidential decrees.

The right to a land share has relevance mainly for former members of collective agricultural entities (soviet “kolkhoz” – collective farm) and is derived from the right to collective agricultural land ownership. It is in fact the main form of privatization of those lands by farmers.

Another institute that derives from the right to own and share land is a widely spread in practice institute of agricultural lands rent, which is mostly used by agricultural subjects, and this institute preconditions their legal nature.

In 2007 an institute of emphyteusis (fee farm) which is derived from the institute of rent was introduced in the Land Code [6]. Emphyteusis – is a

right to use another man's land for agricultural needs.

One of the new institutes of agricultural law is the institute of farming which soundly incorporates norms of law that regulate an elaborate complex of land, labour, property, organisational, managerial and other relationships.

The most stable legal institute of agricultural law is the institute of agricultural cooperation. This traditional organisational legal form of agriculture came through numerous stages of its historical development: it was mostly contorted in the period of collectivisation and restored in 1990s, when, firstly, on the basis of the Law of the USSR from 25 June 1988 «On Cooperation in the USSR» and later on the basis of specialised Law of Ukraine «On Agricultural Cooperation» true cooperative principles of agricultural production started to resurrect.

Other institutes of agricultural law also are an institute of prioritised rural development, an institute of guaranteeing the rights of farmer as a citizen and an agricultural worker, an institute of privatisation and shared property in agricultural complex of Ukraine.

**So, the system (or structure)** of agricultural law is a scientifically based, logical, consistent placing of legal agricultural institutes, norms of which together establish main principles, forms and due process of agricultural activities of legal entities and private individuals, regulates relations between them, them and the state in the process of farming, production, recycling and realisation of agricultural products.

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