



## LECTURES ON LEGAL SUBJECTS BY A. YAKOVLEV AND THEIR MODERN VALUE

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### Summary

The article examines the lecture courses of A. Yakovlev. The views on issues, goals and methods of the study course «Maritime and river law», «International law», «Public law», «Civil law», «Commercial law» and others, are considered; and as well their relevance to modern times is examined. The courses of lectures on legal subjects are analyzed. The value of lecture courses is disclosed, political and legal views of a scholar, a high level of legal training are revealed. The value of lecture materials for study of lawyers is substantiated.

**Key words:** A. Yakovlev, maritime and river law, international law, public law, civil law, commercial law.

### Аннотация

В статье проводится исследование лекционных курсов А. Яковлева. Рассмотрены взгляды относительно вопросов предмета, целей и методов изучения курсов лекций «Морское и речное право», «Международное право», «Государственное право», «Гражданское право», «Торговое право» и других, а также проанализировано их значение для современности. Осуществляется анализ курсов лекций по юридическим дисциплинам. Раскрывается значение лекционных курсов, политико-правовые взгляды ученого, высокий уровень юридической подготовки. Обосновано ценность лекционных материалов для изучения юристами.

**Ключевые слова:** А. Яковлев, морское и речное право, международное право, государственное право, гражданское право, торговое право.

### Statement of the problem.

Ukrainian law, as part of the Ukrainian history, has a centuries-old tradition. The proclamation of the independence contributed to the research of the public, scientific and pedagogical activity of Ukrainian lawyers who resided outside Ukraine. One of them is A. Yakovlev – the famous Ukrainian public and political figure, scientist-lawyer, historian of Ukrainian law, teacher, Member of the Central and Small Council, Director of the Office of the Ukrainian Central Council (UCC), author of numerous works on the history of State and law, common law, constitutional, civil, commercial, maritime, river, the civil procedure law.

**Theme urgency** is determined definitely by a great public and scientific value of A. Yakovlev in the Ukrainian legal science in the first half of the 20th century, the absence in the historiography of special comprehensive research of bibliography of publications.

Status of the research. The works of A. Petrik, V. Goraka, T. Goshko, S. Krivenka, V. Lastovskogo, N. Stetsyuk, I. Popenka, V. Ulyanovsk, P. Usenka and others are devoted to the investigation of his activities and scientific heritage, but unfortunately lecture courses of Yakovlev are insufficiently explored, that led to the choice of the theme of our article.

The aim of the article is a study of lecture courses of Yakovlev and determination of their significance. The

novelty of the work lies in the fact that for the first time in this work the lecture courses of Yakovlev are analyzed in terms of modern development of law.

### Summary of the basic material.

From 1898 to 1902. A. Yakovlev studied at the Faculty of law at the Derptsogo (Tartuskogo) University. In 1904 A. Yakovlev passed the State exam at the University of St. Vladimir in Kiev and got the diploma of the first degree.

From 1911 A. Yakovlev begins the pedagogical work, he teaches the basics of law and legislation in 1-st Kyiv Business School. In this institution he worked until early 1918.

In 1923 lawyer moved to the Czech Republic, where he worked as Assistant Professor and Professor at the Faculty of law and social sciences, the Department of civil process in the Ukrainian free University in Prague. On the 17th of March 1924 he obtained the scientific degree of Assistant Professor, on the same year he was elected as a research Secretary of the University, and in 1926- as the economic officer. He held posts until September 1930. In 1926 A. Yakovlev prepared a work «The theory of evidence in a civil trial. Part I.» and in May 1929 he was promoted to the extraordinary Professor of civil process. He also lectured at the University the courses of «Maritime and river law», «International law» and «Public Law» and «The history of the judicial system and the judging» [7]. In 1928–1929 a

course of lectures on the history of civil law was added to his pedagogical sphere, 1929–1930-a course of lectures on the history of the Ukrainian civil process and the history of the judicial system and judging of Ukraine. In 1931–1932 Professor A. Yakovlev gave a course of lectures on agreements of Hetmans of Ukraine with Moscow, in a 1932–1937 he released courses «civil law», «trade law», «Press Law» [3, p. 504], in 1935–1936 – lectures on material law, and in 1940–1941 – lectures dedicated to German civil law. Similar courses were held by A. Yakovlev in of the 30-s, and in the national Czech Economic Academy in Podebradah. Over the years of the pedagogical activity A. Yakovlev delivered over 10 lecture courses, over 1 thousand students attended his lectures at the Faculty of law and social sciences at the Ukrainian Free University (UFU) in Prague, the majority of them were persons of Ukrainian origin [1, p. 296]. Lecture courses were supposed to facilitate the obtaining of knowledge for the purpose of legal education, employment and entrepreneurship in emigration.

In addition to lectures on legal subjects A. Yakovlev lectured the «History of the codification of the Ukrainian law» about Codex Laws, by which Malorossijskij people are being judged (2 hrs. per week) for students of the historical-philological Department of the so-called philosophy Faculty and students of the Faculty of law and social sciences. In 1935 he lectured



the course «History of State law of Ukraine on the 17–18th century» for the students of the same faculties. However, in the next academic year, these courses were not held, and Yakovlev lectured only in the Department of civil law and civil process [3, p. 363].

Lectures by A. Yakovlev exist only in the form of manuscripts. They allow to uncover political and legal views of a scholar, a high level of legal training.

Lecture courses by A. Yakovlev are characterized by a division into paragraphs. The control questions, legal situations, legal problems, which are compiled for the purpose of fixing, generalization, systematization of students knowledge, preparing them for future professional activity are given in the study guide after reviewing individual topics.

Literature to every lecture course is given for students who wish to deepen their knowledge of the subjects. The peculiarity of the literary sources is that they are presented on the Ukrainian, Russian, Polish, German, French and Czech languages; also the Latin terminology is used.

Lecturer examines the legal institutions of the different branches of the law based on the comparative analysis of the legal systems of Tsarist Russia, the Soviet Union, UKRAINIAN SSR, the countries of Western Europe, Poland, Austria, Hungary, Czechoslovakia, determines the peculiarities of development of law on Ukrainian lands, which were composed of foreign countries in the post-war period. He gives a description of the various branches of international law. Analysis of lecture courses by A. Yakovlev prepared on the basis of the comparative approach enables to attribute him to the founders of comparativistics.

Lecture courses, written in scientific legalese, attest to the professional preparation of the teacher, his awareness, availability of training material.

The basic concepts, classifications of legal institutions are distinguished in the text of the lectures. Definition of concepts and terms is valuable for the study of lawyers.

Lecture materials of the jurisprudence courses are based on the historical details that indicate knowledge of the history of State and law of Ukraine and foreign countries, but the main task of the lectures is to give theoretical knowledge to the students for professional use in practice.

The presence of two separate courses «Trade law» [4] and «Civil law» [5] indicates that A. Yakovlev is a supporter of the dualism concept of private law (Division on Civil and commercial), which is common in the Romano-Germanic legal system. In Ukraine, as in the most Eastern European countries the Division on Civil and commercial law is missed and the relationship between economic organizations is governed by a separate branch of commercial law.

Lecture course «Civil law» in the preparation of lawyers is important especially in terms of emigration, the inter-war and post-war periods when Ukrainian emigrants had to move from one country to another, from Western Europe to America.

The notion of «civil law» is concerned by A. Yakovlev by the contradistinction to a) civil law and the public; b) civil and criminal law; c) civil law as part of private law.

Professor identifies distinguishing features of civil law: 1) norms of civil law concerning the civil legal relations; 2) civil-legal relations are considered such a relationship, the defense of which depends on the initiative of the interested persons and not from order of the public authority. Defend or not defend depends on the will of the interested person; these features of civil law differ from criminal and public law; 3) the characteristic form and method of the defense of civil law is a civil suit, as opposed to the public law, which way is the public prosecution in criminal court and administrative process; 4) proceeding from the interests of a private person, the defense of civil law appeals against the interest of individuals, as opposed to public law, the defense of which comes from public authorities and, though appeals against individuals, but is referring to the general interests of the whole society; 5) under private persons we understand as separate individuals and law combination of individuals, the so-called juridical.

Based on the analysis of the features of civil law the author of course gives the definition of «civil law». It is a set of norms that regulates such legal relations, the defense of which is carried out by action against the interests of other persons [5, p. 1].

According to scientist the law in the subjective sense, includes two items: the

idea of the power of the subject over the object, and the idea of sanctions or of guard-protection of the authorities from the violation by third persons. The first element – authority – called material law in contradistinction to the second element – guard, which is called formal or procedural law [6, p. 2].

A. Yakovlev considers the relationship of civil law and civil process, that is «characterized as substantive and procedural, as the ratio of the norms and sanctions. Material law – civil law at rest; from the procedural law is civil law in a State of practical implementation. Procedural law is a judicial form of civil law and consists of the norms that govern the validity of judicial defense rights and validity of persons, who need such a defense». It is evident that material and procedural law is in close connection, so that the long time procedural law is not isolated from the civil law. But in terms of modern legal life civil process is opposed to the civil law, because, although direct and immediate goal of the civil process is the defense of civil rights and though defense initiative committed to the will of the interested persons and still held the defense through the Court, therefore through the organs of public authority. In accordance with the civil procedure it contains special norms affecting litigious legal relations between court and the parties in the process, their mutual effect [5, p. 5]. Therefore, modern jurisprudence distinguishes civil process in a separate scientific discipline which has its own subject matter, method, system.

The origin of «Civil procedure» as a separate branch of law, required theoretical knowledge of students, so the professor developed a course of lectures «civil procedure» [6].

A. Yakovlev considers the notion of «civil procedural law. Under the civil procedural law in the subjective sense is understood the right of the subject for security – protection of his civil material law by helping of the judicial public authority. The civil procedural law in the objective sense, is a set of legal norms, on the basis of which the judicial public authorities make protection to civil rights of citizens» [6, p. 2].

The Professor believes that from the general interests of the State and society civil procedural law has independent value and their separate purpose, which consists



in the fact that the norms of procedural law affirm and regulate civil-legal relations, warranting the subject of law the use of the rights and forcing the obliging persons to carry out commitments taken by them [6, p. 2].

A. Yakovlev determines the characteristic features of the civil process based on the comparison with the criminal process. The will of the subject of civil law is not the only factor that forms the lawsuit and starts a judicial process, but also the main factor that drives the whole process. According to the lecturer the conclusion can't be made that the norms of the civil procedural law does not have a binding character for the parties and for the Court. On the contrary, the purpose of the civil process is the establishment of order in the civil-legal life – shows that the norms of procedural law have the forcing character; obligation concerns both, the Court and the parties [6, p. 3].

A. Yakovlev describes features of the civil process in European countries indicates the positive aspects and shortcomings. He estimates negatively the civil procedure code of Soviet Russia, which not only greatly expanded the authority of the Prosecutor in the civil trial, but also gave him the following rights, of which the Prosecutor has no even in the criminal process, namely the right to submit objections to the highest court and to demand the abolition of judicial decisions, including those who collected for the final strength of the law, and this right is not limited in term of time limitation and the consequences of cancellation of final decisions disseminated on the rights of the individuals, acquired on the basis of the final decision [6, p. 11]. According to Professor this basis undermined legal order and stability of civil legal relations.

In the Lecture course «Commercial law» [6] scientist-lawyer presents training material of the discipline in twenty-four lectures. The lectures dealt with issues concerning: the concept of trade law; the history of development of trade law, the sources of trade law; system of trade law; subjects and objects of trade law; trade agreements; Exchange law; maritime and commercial law; bankruptcy.

Lecturer believes that commercial law norms legal relationships that arise from trade [4, p. 1]. Private commercial law as part of private law, is in close relation with civil law. Relationship of this lies in that

both commercial and civil law regulate private legal relations between citizens. In consequence of the certain peculiarities of commercial transactions, it is established the Special norms of commercial law, but the trading activity does not cease to be part of the General Civil turnover and is under the jurisdiction of civil law in those cases, when the specific relationship of trade turnover does not stipulate special provisions of commercial law. Thus a close connection between the private commercial and general civil law defines commercial law in a general system of law: commercial law is a part of private law and in relation to the General civil law, which is intended to regulate private legal trade relations. All the others except trade, private-legal relations of citizens engaged in trade activities – is standardized according to civil law. Defining the concept, scope and place of trade law in the common law system, A. Yakovlev gives a definition of commercial law: commercial law is a set of norms that regulates such private-legal relations, which the law defines as commercial [4, p. 3].

According to the academic the commercial law, as part of private law, which contains special norms for regulation of relations, there is no such completeness, systematization and consistency that inherent in civil law. In the commercial law A. Yakovlev marks out the following departments (institutes): 1) the subjects of commercial law; 2) objects of commercial law; 3) commercial agreements; 4) exchange law; 5) maritime and river commercial law [4, p. 9].

A special Institute (Department) is the exchange law that relates to the Institute's Bill. A. Yakovlev interprets the Bill as a special loan agreement, or as an object of commercial transactions, the goods. A special place in the system of commercial law takes maritime law, which is a system of rules affecting transport by sea (or water), means of transport and that all contracts related to seafaring and his subjects and objects [4, 8]. In order to deepen the students' knowledge A. Yakovlev worked out a separate course of lectures «Maritime law as an independent discipline in law faculties».

**Conclusions.** Lecture courses of A. Yakovlev are actual in our time because their content reflects the major

stages of the development of history of State and law of Ukraine and foreign countries, describes the development of different branches of the law on the basis of comparative analysis and opinion of different authors. Lecture material is given in a logical sequence, based on practical experience at a high scientific, methodical level. Learning software material lecture courses of A. Yakovlev by students have to contribute to their future employability in emigration.

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