JURISPRUDENCE II

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Lecture 01
09-04-2018

Introduction

⇒ Theoritical framework [Syllabus]

- Rights • Person • Ownership • Possession • Justice.

UI → Rights / duties :-

- Classification of rights, - essentials, - Parties to legal right,
- Duty, - Classification, - Co-relation b/w rights and duties.

UII → Person :-

- Personality, - Theories, - legal Status, Corp. person / Liability Int. Ext. Uni.
  unborn, Animal, Mass, dead person as personality.

UIII → Possession :-

- kinds, - Theories, - modes of acquisition of possession. - Taking - Delivery - op. in law

UIV → ownership and Property (Def + kinds)

- Components, development, Theories, kinds, diff b/w P/owner.

(UV) → Justice.

- growth & development, liability, kinds of liability; wrong / contract.
  purpose of punishment / theories.

- Justice - Fairness, reasonableness, diff b/w just and unjust.
  what to do what not to do, rule against bias.
- Ad. of Justice - Maintenance of rights and duties.

UNIT (i)

Lecture 02
10-04-2018

→ Rights :-

- claim, demand, power, capacity, Ability, wish, will, interest, Desire, permitted Action, Freedom, liberty, immunity, capacity.

— Definition :-

→ Hibbert :- ✓ Right is a capacity of a person by which he can compell oblige others to do or not to do something.

✓ capacity / power / Ability is not his own creation but is given to person by third party.

✓ Third party may be - God, Public, State.

- if capacity is created by God, rights are divine rights.
  " " " " " Public, rights are moral rights.
  " " " " " State, rights are legal rights.

P.T.O.

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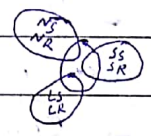
→ **Holland:-** ✓ Right is a capacity residing in a person by which he can control with the consent of state, the actions of others".

- Book - "Elements of juris" - 13 edi P10 Number of objects of law
  - remote and immediate → protection + creation of legal rights'

→ **Salmond:-** ✓ Right is an interest protected by rule of right".
r/r → rule of law (govt., resp. reg).

→ **Paton:-** ✓ Right is the standard of permitted Actions, within a certain sphere/authority.
(action, activity of a person allowed by an authority)
(Natural sphere — N. rights)
(Social sphere — S. rights)
(legal sphere — L. rights)



- a standard of action, permitted by state law - legal rights.

→ **Austin:-** ✓ Right implies the existence of duty".
Prescribes/def., rights/duties → Co relative with each other.

→ **Deguit:-** ✓ No right other than to perform duty".
- if duty is performed, rights automatically create."
- He did not define right., He says there are duties.

→ **Kant, Hegel, Hume:-** - Right is the power of self expression.
you can express yourself.
Case - State of Rajasthan v. UOI SC 1997.

Lecture 03
11-04-2010

S/c - legal right, right is a protected interest.
Co-relative duty, r/d - enforced by state law.

→ **Holmes:-** ✓ right is an inherent attribution of Humanity express of inner notion (consciousness of Human)
- permission to do something to exercise power/capacity.
- Attribution of will (expression).

→ **Grey:-** ✓ Right is a power possessed/hold by a person by which he can make others to do or not to do something".
Nature/source of law - Book P10 (Analytical school) as Hobbest.

→ **Buckland:-** ✓ right is an interest guaranteed by law. [as Salmond].

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→ Kant :- ✓ Right is an authority to compell (to do or not to do something)

→ Kirchmann :- ✓ Right as a physical power."

Theories of rights :

A → Will theory :- Austin, Holland, Pollock,

- Supported by - Kant, Hume, Hegel, Puchta, Locke,
- Criticized by - Deguit.

- will is the base/essence of right
- Right is attribution of Human will.
- H/will base of right.
- Right comes from will.
- will — General — common right.
  - particular — private right.
- components did not qualify whether it is gen. or specific from the words of Founders — A person = specific will.

Criticism :

- Deguit — No, right is not based on will.
  - will may be selfish, (∵ of particular will)
  - → Social solidarity — cooperation, should be basis.

B → Interest Theory :- Ihering supported by Salmond.

- ✓ will is not base of right.
- ✓ right is basically an interest.
- ✓ right emerges from interest.

- Salmond — right is an interest protected by law.
- Buckland — right is an interest guaranteed by law.

→ Till 1868 :-

- Maine - Early Roman law, there were no rights
  - duties were more prominent than rights.
- Japanese code — no concept of rights.
  - 1868 word "Ken re" coined by "Dr Tsuda", reflected in his publication.
  - 1st time word used "Power, interest".
- Holland - 13 ed, 2010, P280 - reflected that 1868 ken re in J. law then thereafter the word right was used.

Conclusion — right is - claim, power, demand, capacity ——— etc.

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⇒ Essentials of a legal right :-

There are five essentials of legal rights —

1. Owner of right, Person of inherence:
Some one who posses right, holds, who can exercise.

2. owner of duty, Person of incidence:
Some one whom against right can be exercised must there - dutyowner.

3. Content / substence / subject matter:
whether to do or not to do something.
- Power you can oblige to do or not to do something
- positive act or negative rights.

4. Title of right:
- How you acheive it (ہدیہ)

5. object of right (added by salmond).
purpose of right.

⇒ Parties to a legal right :-

- According to Austin, There are 3 parties to legal right.
1. owner of right.
2. owner of duty.
3. State.

⇒ Difference b/w legal right and Moral right :

	L.r.	M/r.
Paton =	It is a standard of permitted action within legal sphere (action auth by law).	It is standard of permitted action within moral sphere.
=	protected / recog / enforced by rule of law.	recognized by principles of Natural justice Just, Eq, Good Cns.
=	vio of L.r = amounts to legal wrong.	vio. of M/r amounts to moral wrong.
=	Behind L/r there is state.	Behind M/r there is Society not state.

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Classification of rights:-

01. Positive right & negative right.
02. Primary rt & Secondary rt.
03. Perfect rt & imperfect rt.
04. Right in rem & right in personem.
05. Proprietory rt & personal rts.
06. Rts in re propria & rts in re aliena.
07. Legal rt and equitable rt.
08. Inheritable and uninheritable rts.
09. Public rt & private rts.
10. Municipal rts & international rits.

I) Positive right and Negative right:-

- a right which has co-relative +ive duty → Positive right
- a right " " " -ive duty → Negative right.
- right where you compel other to do something → +ive rt.
- right where you compel other not to do something → -ive rt.
- imposing +ive cut on others, +ive involvement → +ive rt
- " -ive cut on others, -ive involvement/passive involv. → -ive rt.
- other person to create/produce a change → +ive right
- " " " refrain original person → -ive right.

II) Primary right and Secondary right:-

- Independent right, exists on its own - primary existence.
- dependent right, comes into existence when comes violation of primary rights. (depend on primary right).

iii) Perfect right and imperfect right:-

- Both these rights have corresponding duty.
- Corresponding duty - That duty can be legally enforced.
+ Corresponding duty - That can't be legally enforced.
  eg time barred debt.
  - is chance of transformation of imperfect to perfect right.
  - partly paid time barred debt. partly payment of time barred
  → if he promises to pay.

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iv) Right in rem and right in personem:

- right against whole world. (public at Large) (eg property).
+ right against particular person. (eg contractual liability)
  - In nine two levels of actions
    - Actio in rem. (General object/subject against)
    - Actio in personem. (against part. subject).

on these basis right in rem, personem is based.

Lecture of 17-04-2018

v) Proprietary and personal rights:-

→ Those rights in respect of property, estate, wealth.
+ rights of a person in respect of person body, eg life, liberty.
→ are transferable, alienated
+ can't be transferable, non alienable.
→ can be inherited, transfered from gen-gen.
+ can't be inherited, can't transfered.
→ valuable, can be assessed in terms of money.
+ can't be valuable.

vi) Right in-reproprio and Right in re-alina:-

- Both these rights are proprietary rights.
  - are rights in ones own property.
  - + rights in the property of others.

How, when created → mortgage, lease, security.

⇒ Salmond:- 4 thing / methods / modes of encumbrances, How & when rights of others created.

1. Lease → (right to possess & use property of others)
- possession is not given → 2. Servitude → (limited right to use property of others). eg ROW
3. Security → Mortgage → lien
4. Trust → two kinds of owners
   - Trustee, beneficiary → (claim) → at cost
   - for benefit of others (created).

Public ser. → use by public at Large

Private use by part person

is something which facilitates / ensure / protect / promote the fulfilment of some other right.

Salmond: Security can by.

→ Mortgage :- property should be immovable. we are creating interests in immovable prop in favour of creditor
- Creation of interest in immovable property.
- not given possession.

Movable → Hypothecation ~~interest in mov prop~~
- possession is given.

→ lien → right to retain property of others.

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vii) Legal and Equitable rights :-

- not recognized here, nor they exist.
- England - two thirds of courts - common law. (Judgmade law)
  - chancellory / Equitable courts - (on the basis of Equity justice etc)
- Act of 1873 two courts mixed.
- Those rights recognized by common law courts.
- Those " enforced, recog. by Equity courts.

viii) Inheritable and Uninheritable rights :-

- Those rights / which can be inherited, transferred from generations to generation eg property rights.
- Those rights which can't be transferred - eg per-rights

ix) Public and private rights

- Right posed by public - reflect state, soci, people, gen pub people as whole
- Right possessed by individual. defts private, part. persons
- Rights posed by public - public rights (eg use of road)
- " " " individual - private right (eg. orchard).

x) Municipal rights and International rights :-

- rights within part juri, protected by municipal courts, recognized by a part. law of land, ML, M. courts within part jurisdicts.
- Int rights which are protd, ~~endorsed~~ guaranteed by international courts.

xi) Vested and Contingent rights :-

- when your title is perfect, possess right without any condition
- if there is condition attached to your title, right is contingent right, title not perfect.

Lecture 06 18-04-2018

⇒ Classification Duties :-

1) Positive duty and Negative duty.
2) Primary Duty and Secondary duty.

1) Similar as of positive right and negative right but reverse.

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→ a duty which has co-relative positive right. → +ive duty
→ a duty which has co-relative negative right. → -ive duty.
→ to do something → supposed not to do something. / prevent.
→ active participation → passive participation.
→ +ive act → -ive act. → +ive omission.
→ change to return orig posi

ii) Primary duty and Secondary duty.
Same as primary / Secondary rights.
→ primary duty is independent responsibility / obligation.
→ Secondary duty is dependent. comes into existence when there is violation of primary duty.
(not to enter premise, if enter - then compensation → Sec. duty).

Relationship b/w rights + duties:

→ Holland
→ Keeton
→ Paton
→ Salmond
} one school

→ Austin
↓
other school

(Hohfeld - Analytical school)
Q. → Whether r/d is co-relate to each other?
are necessary co-relative to each other.
- two schools on this point.

→ Ist School :-
• view supported by Hohfeld.
• Yes rights and duties are necessarily co-related with each other. no right without duty. whenever there is right there is duty. just no husband without wife etc.

→ Holland :-
Every right implies active or passive forbearence by others, Every right has duty to do or not to do something.

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• Keeton :-

→ Every right has co-relative duty & duty has co-relative right.

• Paton :-

→ We can't have right without duty, no duty without right.

• Salmond :-

→ Rights and duties are co-relative.

→ Second School :-

• Austin :- Not necessary that every right has co-relative duty. vice versa, right may have co-relative duty but not always.

There are two kinds of duties

- relative duties
- Absolute duties

→ Those duties which have corresponding rights, co-relative right. eg duty to pay. etc

+ A duty which have no corresponding right, no co-relative right. eg duty towards God, Sovereign, Animals etc.

→ Relationship – First of all given by Salmond (are co-relative) – right can be used in different senses. right, liberty, Power, Immunity. They have corresponding obligation. (He was from Ist school)

Right → Duty, liberty → No right, Power → subjection, Immunity → disability.

→ Hohfeld :- Question on classification given by Salmond. Why he used word right again on classification. Criticism

→ Classification by Hohfeld. right can be used in defft sense

claim → duty, liberty → no claim, Power → Liability, Immunity → Disability.

Q. Why Hohfeld used word claim instead of right?

In order to avoid chaos and confusion, Ambiguity.

• liberty → Absence of duty in a person.

→ Absence of right of other person against you.

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Lect 07
1-04-2018

Right duty relationship :-

→ Holland
→ Keeton
→ Paton
→ Salmond.

[Austin]

→ Co-relate with each other.

Salmond :-

Right → duty.
Liberty → no right.
Power → Subjection.
Immunity → disability

Hohfeld :-

claim ↔ liberty
Duty ↔ No claim

Power ↔ immunity
Liability ↔ Disability

(opposite)

- There meaning is different.
- They have Co-relative / opposite.
- Co-relative reflects presence of other thing / existence of other thing
- opposite reflects absence of thing.

→ claim :-

- what you can compel what you are saying / direct order others to do or not to do for yourself.
- what others can do for you, involvement of other person.
- others have duty.

(diff)

→ Liberty :-

- Liberty means what one can do for himself.
- Absence of claim in others.
- Absence of duty in duty himself.

Previlige :- Some acts which are otherwise unlawfull but are lawfull for certain people.

- Absence of Liability, class of.

[Immunity ↓ wider number of people]
[disability in others]

→ Power :-

- Certain ability / Capacity to produce a change in a relationship
- Subjection / Liability in other person.

(diff) (Authority) State

- Public Power.
  [Power posed by person as an agent of state]

- Private Power.
  [Power of a person own Power]

(diff) (Capacity) Particular / Specific / general

Immunity:-
- disability in other person.
- whereby you are immune from certain acts.
- Absence of liability.

⇒ **When right Ends?** [Extinguishes].
(i) → performance. (one duty is performed).
(ii) → waiver. (both parties Agree they will not enforce right)
(iii) → Impossibility. [~~in relation with personal Ability~~]
(iv) → Death.
(v) → By operation of law.

Lecture 08
25-04-2018

UNIT (ii) PERSON, PERSONALITY, LEGAL PERSON

⇒ **Who is a legal person:-**
- Human being – layman. legally Every H/b is not a person.
- Subject matter – legal person, who is person in eyes of law.
- Person desired from "persona" – "Mask worn by a actor" o/s
- one – plays different roles (i) → [Person is one who has rights]
- Till 6th century word person was used to determine different roles play by H/b in his life. (ii) [any one R/Non duties also) R+D
- State, Society, law, Govt, auth, Sov. came existence afterwards.
- Early times only Humans → person, with the advent of corporal revolution, companies were added – person.
- Corporation sole.

⇒ **Salmond:-** [who is person, who is not].
"any being capable of Having rights and duties is a person"
(He does not use H/b or inanimate (word)].

⇒ **German writer:-** (Zitelman.
will is the base of personality, any Being who has will, can express his will is a person. (capable of exp-will)
- Zitelman :- personality is legal capacity of will.

⇒ **Grey:-**
- "person is an entity to whom rights and duties are attributed by law".

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not only natural creation but may be creation of law State

→ **Paton :-**

- Person is a medium through which certain units are created and to whom Rights and duties are attributed by law.

→ **others :-**

- Person is one who has Thought, Choice, and Reason.

Case - Somprakash v. UOI :-

person is an entity to whom rights and duties are attributed by law.

— Not necessary H/b are persons only.

- IPC, Person S:11 — any comp. or association or body of persons, incorporated or not. (Conclusive definition)
- Company has separate legal identity.
- Tax — also on companies, person.
- General clause act, 1897. S:3(42) person shall include any co. or association or body of individuals, whether incorporated or not.

legal person not a physical concept, person is a legal concept. (H b + other)

- why other also and ∵ personality to them have attributed by law.

Theories of personality

→ Fiction theory. (Fiction means imagination).

→ Concession theory.

→ Realistic theory.

→ Bracket theory.

→ Purpose theory.

"H.B are person. Conversion is results to other objects"

(I) Salmond, Gray, Keeton, Holland, Savigny, Coke, Black stone. → Supporters/propuders of this Theory.

"In real sense it is only H.B who are persons in the eyes of law"

— certain objects, an animate things they are person only because of fiction given by law ∵

(II) → Savigny, Dicey — Supporter of this theory Salmond also.
- In real sense only H.B who are L. persons (capable of having R/d)
- Certain objects, bodies other than H.B are persons only because of concession given by State.

(III) → Organic Theory — (also known as) (Ling. theory).
Pollock, Maitland, Brown,
- "Nothing is like fiction or concession
Corporation is not person ∵ of fiction or concession
"When we assign personality to Grp or ass of persons
It is not assigned, to four walls, but giving to H.B."
∵ personality is given to H.B.
- It is better to given personality to a group/association rather than individual. ∵ Group/ass have real powers, will, thought, choice., Decision making power.

(IV) → Hohfeld — main propounder of this theory.
- objects other than H.B they are H.B because
∵ It is a sort of bracket, mask, designation.
(law says it is — it is H.B).

(V) → Barker, Brelbe Binz, Cloys, Brakes, — Supporter of P. Theory.
- objects other than H.B are persons because
State has purpose behind them.

~~Only attendence → Saturday due to low roll.~~

Lecture of 20-04-2018
Lecture 10 15-04-2018

Legal Status of [on relation with personality]
→ unborn.
→ Dead person.
→ Idol.
→ Mosque.
→ Animals / Beasts.

⇒ **Unborn :-**
There is no clear view whether he is person or not but there are no. of countries.
And, Ames, Canada, England Expressly attributed personality to unborn

- Situations in legal system - that unborn is person.

eg - Gift can be made in favour of unborn. (treats UB as per)
- Child Abolition / destruction is an offence (refers UB is person)
- HUF - Partition share is kept for unborn (")

S:13,14.... - Transfer of prop. act, rule against perpetuity unborn also limited

Book P:222 → Venkata Subaraya " objected to include UB in this rule because in order to protect his rights (property).

- English law - if mother is preg - death sentence - suspend unless delivery. or convert death sentence.
- Injury to unborn S:312, 313, 316 - IPC - Expressly dealt with unborn.
- Canada - case - injury in mother womb - compensation after birth to the child - law of torts - compensation claim recognized.
- Patan & Irish Court :-
  - case decision 222 compensation to UB after person.
  - P:252 - A text book of jurisprudence. (not expressly denied)
    - ↳ " UB is not a person." (expressly said)
    - Contingent ownership in favour of unborn.
- ~~S:499~~ - Exp. I - IPC - protection to unborn.

Conclusion :- [unborn is a person.] :: of

→ Dead man :-

"Personality commences with birth ends with death"

↳ General rule, - as per ↑ D.M is not person.

- Salmond - 3 things are recog. P:301 12 ed. Books
  - Corpus. (body)
  - reputation. ↳ respected even after death.
  - estate. (property)

Rule. "Body of a deadman is not property of any person"

Above 3 things protected.

S:499 - related to protection of dead pers.

Duty of a State to perform last rituals as per religion

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• rise of grave. → offence → trial

Ex → • 499 - imputation to body of D.P. - offence. IPC. protects.
• Defamation to body of deceased treated as defamation to relatives → can claim compensation u/ Lg tort.
- Property, will → operational
↓ dol → comes into operation after his death.

→ Idol :-
It is treated as a legal person.
Case of 1925, & 1969.
Case - Pramathanath Kumar Mullick v. Kumar Mullick 1925.
Idol was declared has legal person.
Case - Yogendranath v. Comm. income tax, 1969,
Idol is person in the eyes of law. (authorised)

→ Mosque :-
Case - Mulla Balkhi v. Hafeez-ud-din; 1925
It was held that mosque is person in eyes of law. [
1980 case - other case Masjid shahed Ellung case.
Mosque is not a legal person.

→ [Guru granth - L. person = They worship directly to them].
Idol treated as person.
(Sarmoni Akali dal - case - related 4-4)

→ Animals / beasts :-
Ancient times - Treated as persons (eg fox, cock, trialed)
Romans, Greeks, I treated P
- Sutherland :- "prin. of criminal" p:44 - case against rats destroy fields - punishment for facts.
Modern view = Animals are not persons.
They are objects of 7 duties
They are not subjects of 7/d.
• Police dogs - imp - person not convicted by on basis of dog
- Pavangalpe. i cr. d penal - person can not convicted on the basis of dog. + dog can't be cross examination
~~→ Sannyasis = is not a person. even he's H/B.~~

- Minor ✓
- Unsound mind ✗.
- Intoxicated ✓ or ✗. (voluntary ✗ involuntary ✓) → depends.

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Lecture 11
16-05-2018

Corporation = (Artificial person)

⇒ Liability of Corporation:
- Contract.
- Tort.
- Crime.

- Company is person in eyes of law.
- Expressly included.
- what is liability in breach of contract, tort, crime.

(I) ⇒ Contract :-
Condition → - Breach of contract - Corp. is liable for breach.
If should be intra vires within object clause.
if ultra vires Then Co. is not liable

(II) ⇒ Tort :-
Case :- Abrath v. N.M. railway Co. (first case)
Question whether Co. is liable for comm. of tor
Abrath > doctor > certificate - person - death due to railway.
Rly - death certificate is false, if was proved
certificate is not false, doctor file case against Co.
Court → NO - Co. can't liable for tort.
(Campbell v. Peddy - 1911)

Case :- Campbell v. Paddington (1911).
Court → Co. can be made liable for the tort.
So Co. is liable for tort

(III) ⇒ CRIME :-
Case :- Citizen - Assurance Comp v. Brown (1904).
Co. member - bribe - crime Q. of liability in crime.
Court → Yes, company can be made liable for the crime.
Conclusion - Co is legal person liable for C.T.C.

Can Corporation be citizens of India?
Company can't be a citizen:
Case - State trading Corp v. C.T.O 1963. (whether citizen of India or not
Case - R.C Cooper v. UOI 1971. → NO, Co. is not citizen of India
Case - Bar council of India v. H/c of Kerala 2004

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- citizenship act 1955 exclude company from citizenship.

Nationality:-

- Solomon case - co-different from members - (no nationality)
- Diamler co Ltd - case - co. identity by its members (D/charter).

Generally Nat. is determined via place of incorporation.

Corporation

- Corporation Sole.
- Corporation aggregate.

Blackstone - V.1 P249.

o - C.S - incorporated series of successive persons that means corporation sole. e.g. registrar of univ

"The king is dead long live the king" - capacity remains there.

→ after death of king legal capacity of crown remains there.

oo - C.A - means incorporated group of co-existing persons.

e.g company. - 4 - two or more persons =

Lecture 12 17-05-2018

Possession: UNIT : (iii)

- Difficult, complex.
- Possession is more important than ownership — "Sir"
- Savigny, Holmes, Salmond, Pollock - defined possession

→ literal meaning. → physical control over object, → relation with physical control over object or thing.

→ Basic relationship b/w object and person

→ occupying the property.

→ To being possessor. (you have possession)

→ To possess.

- why possession is protected / recognized / respected?
- why it is known as 9 points in law?
- why it is known as 9/10 of ownership?

oo If there are 10 laws relating pro, good, med. subst out of 10 laws 9 will favour to possession only one will favour to ownership.

- ownership - 10 rights, 9 rights → possession

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- difference of 10 steps, → ownership, 9 steps possession

⇒ **Reasons:-**

(i) Possession is evidence of ownership:-
S:110 of IEA - BoP - owner to prove his owner.

(ii) Possessor has better title against whole world except real owner.

(iii) It is one of mode of transfering ownership.

(iv) Un Interrupted possession for long time gives ownership by way of prescription.

(v) Possession gives certain rights to the possessor.

(vi) It is the Root / base of title. (vii) Courts gave imp. to possession

⇒ **Philosophical Reasons:-**

→ Rousseau
→ Kant, Hegel
] → Poss. is protected because it represents will of people.

→ Savingny. (will of people)

→ Thering (will is to be protected) → Poss. protect)
(manifestation of Human will)

because if will not protect people will take away Poss / property It will create violance unlawfull acts, if we will not seng. ↑,

Thearing → because it helps in law of tort, e.g. trespass → against possession
law of crimes - see who was having possession.
transfer of property - see (↓),

+ also → • res nullis - no owner. → first possessor is owner.
↳ owner less object,

☆ Lecture 13 18-09-2018

One of the component of ownership is possession

→ **Savigny's theory of Possession:-**

- Historical School jurist.
- His theory is based on one man Roman test, jurist whose name is
- Savigny says in order to have possession two things should be there

→ Corpus possession:- Simply known as Corpus
→ Animus Domini:- Simply known as Animus
] Then only you have possession, when you have 3 things?

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- Corpus means three things
  a) Physical control over property.
  b) Exclude the foreign body from interference.
  c) Reproducing property at will.
  If these three things are there, then only one can say he has possession.
- Animus, intention to hold the property as an owner; such and such kind of control that there shall presume, you are owner of property.
- If these things, features, capacities, abilities are there then and only then you can say you have possession. If one of the element is missing / lost possession is lost.

Criticism:-
- His theory is based on one man test, we can't believe in.
- Savigny says if one of element is lost, possession is lost, but practically that is not true, even if you have only one element possession is there, in case of corpus if any element is lost, shall possession there/exist, animus is there.

→ Pollock:-
- possession means physical control of a person over the object/thing.

→ Hollmes:-
- In order to have possession, one should stand in physical relation with the object and with the rest of world (means intention). Such environment to be created as if one should have intention to hold property.

→ Salmond:-
- possession is the basic relationship between object and the person. It is the continuity exercise of a claim of a person over the object for exclusive use of that object over which person is claiming possession.

→ Sir Henry Summer James Maine:-
Possession is the contact between the property/Thing object and the person.

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⇒ Kinds of possession:-

- Corporeal and incorporeal possession.
- Immediate and mediate possession
- Concurrent possession.
- Constructive possession.
- Representative possession.
- Adverse possession. - Derivative possession

① Corporeal and incorporeal possession:-

based on two kinds of property.

- Corporeal prop → which has physical existence.
- Incorporeal prop → which has no phy. existence
  Conv. / intangible prop → which we can't touch.
- possession of object which we can touch — CP.
  possession of object which has physical existence — CP.
  " " " Tangable object — CP.
- + possession of incorporeal property, — IP eg patent → Poss
  " " intellectual property, — IP copyright → Poss
  " " commercial prop → IP reputation, trade mark.
- In roman law called "Possessio corporis" — Corporeal Poss.
- + " " " " " Possessio juris" → — I. Poss.

Some of the jurists called it as "Quasi / semi possession"

- Salmond → there is no incorporeal possession, difference is not right.
  Thering "real sense of poss. is not there in I.P. Basic elements x.
  there is continuing use of property. they reject it.

② Immediate and mediate possession:-

- Immediate means direct possession.
- + mediate means indirect possession.

∴ IP — If the relation b/w person and object is direct.
  — If property is directly in your control.

- MP — If the relationship b/w P & O is indirect there is someone between person and object.

Q. To be in possession v/s having possession
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(3) Concurrent Possession:-

C.P- when two or more person are having possession of same an object it is concurrent possession.

Possession should not adverse/effect each other (peacefully possess)

(4) Constructive Possession:-

- possession in law not in fact.
- Pos in fact → phy. control over object with object
- pos in law → recognition of phy. control,
- not Actual possession

(5) Representative possession:-

If you are in possession of a thing through an agent (representative control) Similar to mediate possession. Possession not directly but through an agent/servant.

(6) Adverse Possession:-

- Exclusive, complete, full possession.
- Possession - continuously control over object from long time
- Such possession you are now claiming ownership - it is Adverse possession, actually/just possession by owner.

(7) derivative Possession:-

Possession derived from some one eg. bailee, mortgage.

Lecture 15
24-05-2018

Modes of Acquisition of Possession:-

- By taking
  - original taking.
  - Derivate taking.
    - Rightfully D.T.
    - wrongfull D.T.
- By delivery
  - Actual delivery
    - Traditio Bearer Manu.
  - Constructive delivery
    - Constitution Possession
    - Attornment
- By operation of law
  - Inheritance
  - prescription

- Possession can be obtained in 3 ways, Taking, delivery & by op. of law.

→ Taking:-

when you obt. pos of object without consent/coop of other person (but in case of giving, there is consent of both);

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- against consent of other, without consent of other.

→ **Original Taking:-**

- poss. by taking which has no previous owner (resultis = no owner) ownerless object

→ **Derivative taking:-**

- poss by taking which has previous owner, taking without cooperation / consent.
  - **Rightfull D.T:-**

legal protection ← Taking + no-coop + prev. owner - ∴ person suffered to do...

  - **wrongfull D.T:-**

no legal protection ← taking + no-coop - by unlawfull means.

→ **Delivery:-**

- Consent / cooperation / involvement / will of two persons.
- Two parties - consent.
- when one person gives other takes.
- when poss - with consent of other person.

→ **Actual delivery:-**

if goods are actually delivered / immediate / direct. with consent / coop of other person.

→ **Constructive delivery:-**

- goods are not actually delivered.
- possession in law not in fact.
- Transfer of mediate possession. / Surrender.

immediate → not changed

mediate → change.

→ **Traditio Brevi Manu:-**

There is surrender of Mediate Possession

∵ he has only M.P.

(1) — Surrender - M.P.

(2) — Surrender - M.P.

(3) — Surrender - M.P.

eg - Watch - W. maker → repair → owner
Bikes → Agency
Laptop → →

→ **Constitution possession:-**

T/M.P.

→ **Attornment**

T/M.P - already M.P. poss. in hands.

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→ operation of law:-

- Automatically – obtain possession according to law
  - Inheritance
    - legal heirs - get prop. by operation of law (property taking)
  - Prescription
    - long usage on something – without interruption eg ٢٠ years

lecture 16
25-05-2018

OWNERSHIP: UNIT: IV

- Bundle of rights / sum, collects — laymen's def. (Yasaunsis)
  property / goods – use, enjoy / consume, destroy etc. – all rights – ownership
  - Exclusive control – sum of rights
  - collection of rights – bundle of rights
  - Absolute control over object, Full control over object
  - Exclusive / complete / total / full relationship with object
  - To being owner – To own.

Laymans Definition

- Ancient period (Roman / English law)
  - There were no difference b/w ownership / possession
  - There were no concept of ownership
  - It came into existence when nomadic society changed in Agricultural society.
  - Concept was first recognized by Roman law.

Roman law – Two types of control over the property / object
- Simple control / relation
- Exclusive / Absolute control.

The property in possession was called "Possessio" (possession)
- The property over which they have absolute control "Dominium" (ownership)

→ English law – used in 1583 (first time ownership used)
Two kinds of property
- Land (Immovable)
- chattels (Movable)

They were holding immovable property by way of "Leisure"
They were hold movable property by way of "Title"
Seizer / title – developed in ownership

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• Paton, Holland etc define it.

1. **Austins Theory of ownership:-**

→ ownership is a right of a person over an object.
→ which is indefinite in the point of uses. (use in the way you want)
→ unrestricted in the point of disposition. (dispose, sell to anyone you want)
→ unlimited in the point of duration. (right over prop. forever)

Applicability:-

• legal or Reasonable restrictions. (limitation on right to use) not practically possible.
• Dispose - Right of Preemmision :- (sell to neagones/relatives) not unrestricted. reasonable restrictions.
• possession not unlimited - duration.

2. **Holland's Theory of ownership:-**

- Right to possess.
- Right to use.
- Right to dispose.

3. **Hibbert :-** Book → 'Jurisprudence' 13th ed., P212, 2010.

ownership means four things:-

- right to use an object or thing.
- right to exclude others from use.
- right to dispose.
- right to possess / destroy

→ added → it is not possible, land can't be destroyed
∴ land can have no owner.

4. **Keeton :-**

ownership is ultimate right of enjoyment of object / property.

5. **Buckland :-**

ownership is ultimate right

6. **Black law distinonary :-**

ownership is the collection/sum of rights eg use, possess, dispose

7. **Pollock :-**

ownership is the ultimate power to use and dispose the property allowed by law.

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0. Hohfeld:-

ownership is the collection of rights previlegs and immunities.

9. Paton:-

ownership means right to possess, use, alienate, dispose.

Conclusion:- collection of rights, use, possess, consume, power/ immunity/ pvt - over object

- Rights of owner:-
  - possess, use, consume, enjoy property, eliminate dispose etc.
- Incidents of ownership:-

→ Rights (to use, possess), → previlegs,
→ liberty → immunities → powers.

Lecture 17 25-05-2018

Kinds of ownership:-

→ Corporeal and incorporeal ownership.
→ Sole and Co-ownership.
→ Vested and contingent ownership.
→ Trust and Beneficiary ownership.
→ Legal and Equitable ownership.
(Absolute and limited ownership).

- Corporeal and incorporeal:-
  - ownership in corporeal property is corporeal ownership.
  - ownership in in. co. (intellectual) :- is incorporeal ownership, Cop. Pat TM.
- Sole and co-ownership:-
  - English law - tenants in common (sole), joint tenants (co-ownership)
  - if only one person is ~~owner~~ of property - ownership - sole.
  - if 2 or more than 2 owners are owners of same prop - ow - co-o. eg partnership.
- vested and contingent ownership:-
  - V.O - when the title of the owner is perfect. there is no cond. restrictions (except reasonable cond.) exclusive, Absolute — vested. or
  - if the title is not perfect, likely to be perfect on happing of some contingencies, or has condition
- Trust and Beneficiary ownership. (Trust - 2 owners — A - Creator, Trustee — B, C, ... - Beneficiary).
  - ownership vested in trustee, — T.O.
  - ownership vested in Beneficiary — B.O

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Legal and Equitable ownership

- Common law courts. Judgment law.
  Equity law - PNJ.
- ownership recog. by common law - legal ownership
  ownership recog. by Equity law - Equitable ownership.

⇒ Difference B/w ownership and Possession.

Possession:	ownership:
→ physical control over object	→ Absolute/exclusive control over object
→ physical relation with object	→ Absolute/exclusive relation with object.
→ Act of possessing.	→ Act of owning.
→ To being possessor.	→ To being owner.
→ limited rights (poss/use).	→ unlimited/more rights (poss/use)
→ limited power. (pollock) ⟷	→ Exclusive power over an object.
→ Thing, possession is in fact	→ ownership is in law.
→ " , possession is defacto Exercise of the claim	→ De-jure recognition of the claim.
→ Salmond, possession is guarantee of fact	→ ownership is guarantee of law.
→ Transfer of possession is Easier	→ transfer of ownership is complex/technical/difficult.

Modes of Acquisition of ownership:

→ will
→ inheritance
→ Gift
→ Sale
→ purchase.
→ prescription.

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Lecture 18
29-05-2018

Property :-

- interconnected with law of ownership, co-relative, dependent,
- existence of one implies existence other (property / ownership).

Used in 4 senses :- ① Property means all rights of a person whatever description.
includes both - personal rights, proprietary rights. (reputation, land, life, debt)

General legal syst ② ③ used.

② property means only proprietary rights, not incl Per. rts. (land, build etc)
includes both - Right in Rem / Right in Personem.

③ property means proprietary rights only those which are real (rt in rem)

④ property means only corporeal property.

Definitions :- → Salmond :- property means proprietary rights which are real ③ as used.

→ Ahrens :- property is the material object subject to immediate power. [Corporal prop]

→ Austin :- property is the greatest right of enjoyment.

→ Bentham :- property means corporeal property (narrowest sense).

Case :- R.C. Cooper v. UOI (1970) % Property is the highest right of enjoyment.

→ KINDS OF PROPERTY :- a) Corporeal prop, incorporeal property. - Tangible
- movable property - immovable property.

S:2 • Ind. reg. Act (1) • General Clause act S:3 • T.P. act - S:3 - 1-m IP - Leg - def im. property.

3 kinds of def. - Gen., inclusive, exclusive, S:2; S:3 → inclusive def T.P → Exclusive

Salmond :- 5 things are immovable ① Surface of the land / ground.
② Column of space above the surface ③ Ground under the surface
④ Natural vegetation (thing grown from nature) ⑤ things attached to land by human Agency.

Right in Re propria (rt own prop) Right in aliena - others.

⇒ [rt to Prop - F/r - repealed - Const. validity = Add to it] (art 21 incl. right to prop)

Lecture 19
30-05-2018

Administration of Justice :- UNIT V

→ Concept of justice :-

- State has two important function → War (occasionally)
→ Administration of justice → routine. (imp).
- If state fails to ! it can't be rightly called state.

Laymen → Justice means reasonableness, fairness, differtiate b/w right / wrong.
quality of being fair; just; reasonable, opposite to unrea, unfair, unjust
rule against discrimination, Equality, liberty, what is just / unjust (diff)
(Fairness, reas, Arbitrary etc - comes in mind when we think justice
What is true, what is false, all these concepts → are focal point of justice concept
Balance of interests, fullfillment of obligation, rule against arbitrariness.

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Trends

Justice → Traditional concept of Justice / Modern concept of justice

- TCJ – Focus on just "Man" (individual) should be just.
- MCJ – Focus on just "Society" (Society should be just) – Social justice

TCJ: is By Plato and Aristotle – Justice – Typical exemple of Justice

Focus on man
- P – Justice will be achieved/done when an every individual will fullfill his assignment/job (when man will perform duty).
- A – Justice will be achieved when man will fullfill his moral obligation towards the other.

MCJ: – is Social justice typical example – Equality in Society – laymen.
- William K. Frankena's – Social justice define it first time
- S.J is achieved or a Society is just Society when every individual in the society receives what is due to him.
  As per law / morality – what is due to him ←].
- 3 principles – of Society work on these 3 principle – Society – just Society.
  i) Non Injury ii) Non interference iii) Non impoverishment. [not deprived of rights, your job.

– Allen's theory of Justice:-
- Justice means balance/reconcilation of interests [harmonization]

– J.S. Mill:-
Utilitarian concept
- Justice means maximum happiness/pleasure to max. no. of people.

– Benthem:-
- To bring pleasure and avoid pain.

– Baldwin:-
- J. Quality of behavior of Person towards others (in Society).

– John Rawls:- "principle of liberty" → highest value
- Theory in two principles → liberty. (~~justice means more liberty~~) ↓ Not securing Envy, Envy of other cause.
  → equality. → a:19, 25,
  is reservation ← (Sometimes inequality leads justice). liberty is just to treat all equally.

– F.A. Hayak:- – Robert Nozick:- [Capitalist version of justice]
inequality in the distribution of goods is not unjust in competitive market
- Possession of goods is just, if title is just, if you achieved legitimately

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Lecture 20 01-06-2018

Ad. of Justice
Concept.

Shakhsnewaz Sir → Ad. Justice + Attendance.

Lecture 21 05-06-2018

Adm. of Justice:-

→ **Origin & dev. of Adm. of Justice:-** (growth / development)

- Alj → To Administer justice, maintenance of R/Duties (Protect) enforcement of duties, protection of rights, Appl. of justice implementation of justice → Focal point of Adm. of Justice.
- Justice was there - when there was no Society, ↓ ancient society, before State, Courts.

- **Ist Stage** :- In the form of self help and ~~prosecutive~~ private revenge. (before State, Society, courts) offence = offence, concept of private justice,
- **IInd Stage** :- State was not fully developed. Tit for tat. (Eye for Eye)
- **IIIrd Stage** :- rudimentary form. Justice was Adm. by way of compensation. wrongdoer to victim.
- **IVth Stage** ↓ Modern Stage. when State came into existence, Adm-justice to State. Justice Adm. by State / courts / police wrong doer punished.

Advantages of Adm. of Jus.

→ if you want to see beauty of State you should see judicial System of State — Lord Bryce.

→ It represents / reflects the efficiency / beauty of whole State.

→ Salmond (def. of law) - "Law is the body of principles / rules which is applied by State in the Administration of justice."

→ Rasloepond (") " Law is recognised / used for Adm. of justice".

→ Coke (") " wisdom of law / jus. is wiser than wisdom of Man

: wis / law / jus → reflects wisdom of community.

→ Hebbert Spencer "Every man is free what is desires to do subject to the conditions he should not infringe the freedom of others. (once he violates he can't do what he do". we are supposed to do according to law / justice.

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Merits :- (justice according to law, rule of law)

- Uniformity.
- certainity.
- impartiality.
- equality.

→ main 4 Adv. of Adm. of justice

Demerits :-

- Rigidity
- Formalities.
- Complex.

⇒ Types of Justice

- Civil justice / criminal justice
- Economic justice
- Political justice
- Social justice.

imp

- Civil / cr. justice

- Blackstone - public wrong / private wrong.
- Diff in Adm. of law, courts, proceedings

Civil justice	Cr. justice
→ Adm in civil courts	→ Adm. in cr. courts
→ civil laws applied (Sub or procedural)	→ cr laws are applied IPC or CrPC.
→ Compensation	→ punishment.
→ civil rights / private rights no of civil rights (remedies)	→ public rights no of public rights) (remedies)
[civil wrong] (pvt)	[Crime] - (pub).

- Economic justice :-

- No discr. in the basis of wealth, equal dist of goods/ one should be given what he deserves. [opportu / benefits / entitle]
one should be given for which he is entitled
one should be given what is due to him

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→ Political justice :-

- Every one has equal right in political participation.
- vote (right) - right - pol. participation

→ Social justice :-

- Equality in the society, when individuals do their own work.

Administration of Justice - End of law is to deliver - justice.

Lecture 2K 06-06-2018 Imp

→ Theories of Punishment :- reason for good law [Satisfaction of soul] (relief)

- purpose of punishment - Explained by Theories of punt.

a) Deterrent theory.
b) Retributive theory.
c) Preventive theory.
d) Reformative theory.

→ Purpose - deterrence, to create fear in like minds of people like minded. who have capacity to indulge in crimes.

- Salmond - purpose - That it should create example for like minded people and warning for them.

Punishment in open fields. [Branding, flogging → Forms of Ret punst.

→ purpose - End of crime/offence. [Eye for Eye].

↓ offender should feel some pain. (Sir. Walker).

→ purpose - to disable the offender/criminal so that he will not commit crime again.

To prevent further committing offen.

- Paton - purpose is fullfilled by prevention, disabling.

→ purpose - Based on humanistic good.

He/she [C.] does not cize to be Human.

not applied to Hard core criminal.

reform the wrong doer / criminal.

Supporters - while pronouncing judgment, judge should take account, character of offender, situation, first crime/repeate all things should be taken into consideration.

- criminals are ill, they need reformation.
- parole / probation - Tools of reformation.
- Juvenile homes - leg for reformation of juvenile.

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⇒ VOM = victim offender mediation (not in India)

- Restorative justice or VOM :- New concept.
  - in islam also
  - → offender / victim bring on same table.
  - → victim should be given something.

⇒ Liability / Kinds:

When a person does what he/she was not supposed to do or does not do what he was supposed to do.

→ liability arises from two things:

→ wrong (do/don't → supp – do/don't).

→ contract (liable → TOC).

Kinds :-

→ Absolute liability – No exception)

→ vicarious. (liable for act of others). (S:4 of IPA, 1942) → Partner liable

→ Strict liability. (Exceptions).

→ civil liability (arise from civil liability), compensation, civil law, CPC

→ criminal liability (from crime, punishment, c. law CrPC)

06-06-2018