

# Jurisprudence

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1. • What is jurisprudence?

Ans → Jurisprudence is "the study of fundamental legal principles". "Juris" in Latin signifies legal, and "prudentia" means skill or knowledge.

According to Holland Jurisprudence is "the formal science of positive law".

According to Allen Jurisprudence is "the scientific synthesis of the essential principles of law".

2. • Write a short note on: The Historical School.

Ans → The Historical School of Jurisprudence deals, firstly, with the general principles governing the origin and the development of the law and with the influences that effect the law. Secondly, it also deals with the origin and development of those legal conceptions and principles, which are so essential in their nature as to deserve a place in the philosophy of law. According to Henry Maine all laws should have the basis of historical observation.

3. • Write a short note on: The Sociological School.

Ans → This school is comparatively modern, and it devotes itself to the study of law as a social phenomenon, and tries to

examine the consequences of law on human beings in civilised society. To understand the scope of this school, one has to examine how sociology can influence the legal system in a particular country. By 'sociology' is meant the study of man in society, and in studying man, the sociologist studies the law, not as it is understood by the lawyer in his professional capacity, but in so far as law actually governs the behaviour of an ordinary citizens. Sociological jurisprudence deals with the study of social consequences of law and with the observation of sociological phenomena. In its important branch called criminology, sociological jurisprudence studies the phenomena of crime, the mind of the criminal, the causes of crime, the remedies therefore, the effect of punishment, and so on.

4. State two benefits of the study of jurisprudence.

Ans → The study of jurisprudence does not serve only academic purposes. It will help lawyers and other practitioners in the practical world as well. It sharpens their legal knowledge and also it trains the mind to find alternate routes and

channels of thought in case of difficulty

5. • Write a short note on: Feminist jurisprudence.

Ans → Feminist jurisprudence is a philosophy of law based on the political, economic and social equality of sexes. As a field of legal scholarship, feminist jurisprudence began in 1960's. It influences many debates on sexual and domestic violence, inequality in the work place, and gender based discrimination. Through various approaches, feminist have identified implications of seemingly neutral laws and practices. Laws effecting employment, divorce, reproductive rights, rape, domestic violence, and sexual harassment have all benefited from the analysis and insight of feminist jurisprudence.

6. • What is positive law?

Ans → The theory of positive law is majority and commonly attributed to John Austin. Positive law is simply that law made by anybody, body or bodies, vested with the power to make such law, which is enforced by sanction and have binding effect on the members of the state or society.

7. • **What is law according to H.L.A. Hart?**

Ans → According to H.L.A. Hart "Law is the system of rules". According to him: "where there is law, the human conduct non-optional or obligatory". This idea of obligation is at the core of a Rule. Rules of obligation are supported by great social pressures because they are felt necessary to maintain the society.

8. • **Explain Kelsen's theory of law.**

Ans → Hans Kelsen was an Austrian jurist and philosopher of law and politics. According to Kelsen, "a theory of law must be dealt with law as it is laid down and not as it ought to be". His theory is a revolt against vicious ideology, corrupting and the jurisprudence of totalitarian state. Kelsen's opinion was that "a theory of law" must be free from ethics, politics, sociology and history.

9. • **Explain the functions of law.**

Ans → There are many purposes served by the law. Out of these, the main four are maintaining order, establishing standards, protecting liberties and resolving disputes. Most jurists agree that law is an instrument of society to establish justice. In other words law means fair and equal treatment of all.

10. Write a short note on purpose and functions of law.

Ans → Through law, the information is passed regarding the system to the citizens of the country in several ways. It is reflected also in various branches of law. For instance, contract law quotes that the agreements are supposed to exchange services, goods or something which is of value in the eyes of law. Therefore, it involves everything i.e. from purchasing a ticket to the trading plans in the market. It furtherance to that, property law explains the rights and duties of each individual towards the property. Several offences against state, federal or any local community appeared as to be a subject matter of criminal law.

⇒ There are several numerous kinds of purposes which are served by law. Out of many, there are four main which is as follows:-

- (i) Maintaining order
- (ii) Establishing standard
- (iii) Resolving disputes
- (iv) Protecting liberty & Right.

⇒ Roscoe Pound a jurist states that four major functions of law:-

- (i) Maintenance law & order in society
- (ii) Maintain status quo in society
- (iii) Ensure maximum freedom of individual
- (iv) To satisfy the basic needs of the people

11. What kind of Justice is reflected in Article 17 of the constitution?

Ans → In India, it is the constitution that guarantees fundamental rights - some to all persons and others to citizens of the country. Thus, for instances, the right to equality is enshrined in Article 14-18, with article 14 laying down that the state cannot deny to any person equality before the law or the equal protection of the law. Article 17 then abolishes "untouchability" and makes it punishable under the law. Any other article have some exception but in this article no if no but only punishment.

12. Explain the Advantages of law.

Ans → The chief advantages of law are the following:

- (1) Uniformity and certainty
- (2) Protection against improper motives of judges
- (3) Freedom from the errors of individual judgement
- (4) Reliability.

13. What is compensative jurisprudence?

Ans → According to this theory, the object of punishment must be not merely to prevent further crimes, but also to

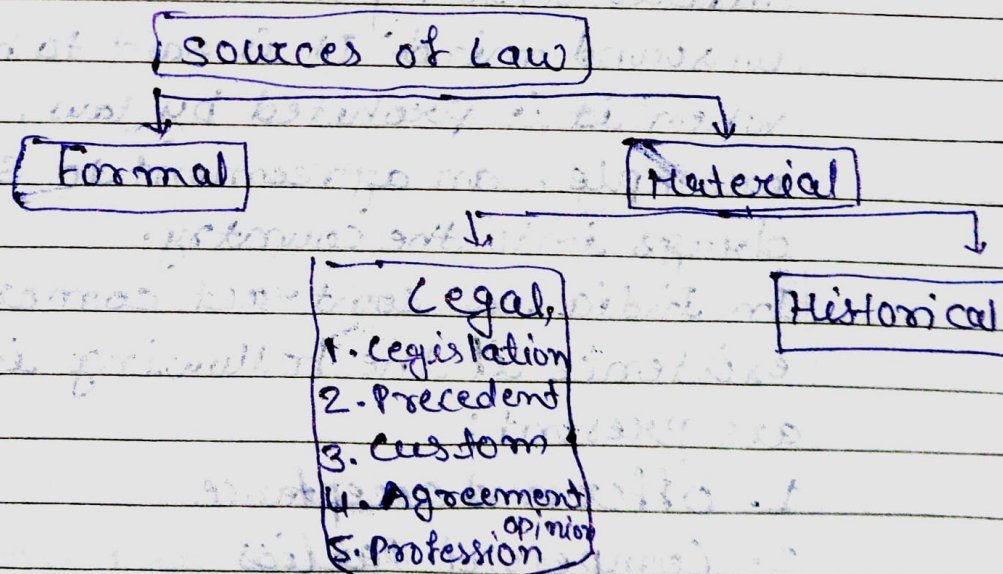
compensate the victim of the crime. This theory further believes that "the main spring of criminality is greed, and if the offender is made to return the ill-gotten benefits of the crime the spring of the criminality would be dried up."

14. Explain the different sources of law in India.

Ans → The two main sources of law in India are  
1. Formal and 2. Material

Material sources can further be subdivided into:

- (a) Legal sources and
- (b) Historical sources



① ⇒ Formal source - Salmon defined as that from which a rule of law derives its force and validity. The formal source

Source of law is the will of the State, as manifested in statutes or decisions of the courts. It is that from which the authority of the law proceeds.

② Material source - The material sources of law are those from which is derived the matter though not the validity of the law.

15. Write a short note on agreements.

Ans - A contract is an agreement which is enforceable in a court of law, as for instance a contract to sell a car or a house. There are different kinds of agreement. An agreement is said to be void when it is not recognised by the law, as for instance, an agreement entered into by a minor or a person of unsound mind. It is said to be illegal when it is prohibited by law, as for example, an agreement to smuggle drugs into the country.

In India, a contract comes into existence if the following ingredients are present:

1. Offer and acceptance
2. Competent parties
3. Free consent
4. Lawful object and consent
5. Agreement not being prohibited under Contract



16. Write a short note on: **Judgemade law.**

Ans → The law is created by the judge, not by a legislature is known as judgemade law. A judge made law is a law rooted in a judiciary decision, not an act of legislation made by law makers or a regulation created by a govt agency with the legal authority to do so. The collective body of judge made laws in a nation is also known as case law. Many nations allow judges to set legal precedents when making high court decisions, adding to the body of law in a nation and providing new interpretation of existing laws. Lower court do not have the authority to make judgemade law. Only judges operating in appellet and other high courts are able to set legal precedent by either changing the way the court interpret a law or offering a new interpretation that expands an existing law.

17. **What is subordinate legislation?**

Ans → Subordinate legislation is that which proceeds from any authority other than the sovereign power, and, is therefore, dependent for its continued

existence and validity on some supreme or superior authority.

18. State the meaning of phrase 'Noscitur a sociis'.

Ans → The latin maxim, Noscitur a sociis has been translated by Lord Macmillan as, "The meaning of a word is judged by the company it keeps." This means that the meaning of a word, the connotation whereof is not clear, may be ascertained by referring to the meaning of the other words associated with it. Noscitur a sociis is known as (Rule of ejusdem generis) which involves a reference to the context and refers to a similar item.

19. What is the golden rule of interpretation?

Ans → Golden rule was first evolved by Lord Wensleydale. According to this rule, the courts imply into statutes saving clauses that have been expressed, to avoid what they regard as absurdity. According to these implied saving clauses, it is considered that the previous principles of common law are preserved. According to Byles J, It is a sound rule to construe a statute in conformity with the common law rather than against it.

20. What is a precedent?

Ans →

A precedent is a statement of law found in the decision of a superior court, which decision has to be followed by that court and by courts inferior to it. If ~~each~~ judge were left to himself in deciding cases without reference to similar cases decided in the past, the result would be utter confusion and chaos. Thus the theory of precedent plays a very important role in the jurisprudence of every country.

21. Discuss judicial decisions as a source of law?

Ans →

There are many sources from which we derive what we know to be as law. Law in lay man terms is nothing but a set of rules and regulations that we as a society agree to follow so that we do not infringe on the rights of others and can safeguard our own rights. A precedent is a principle or rule that was declared or laid down in a previous legal case. It is binding or advisory on tribunals and inferior courts when a similar case with similar fact arises before it. Judicial decision or precedent is a process which is followed by the judges to take the decisions.

22. what is doctrine of stare Decisis?

Ans → The policy of the court to stand by precedent is termed as stare decisis. In a literal sense, it means "to stand by decided matters". The phrase "stare decisis" is itself short of the latin phrase "stare decisis et non quieta movere". This phrase means "to stand by decisions and not to disturb settled matters."

23. write a short notes on: kinds of precedents.

Ans → Two types of precedent :-

- (i) Authoritative or persuasive precedent
- (ii) Declaratory or Original precedent

→ Authoritative or persuasive - An authoritative precedent is one which judges must follow, whether they approve of it or not. It is binding upon them and excludes their judicial discretion for the future. The authoritative precedent recognised by English law are the decisions of the superior court of justice in England.

→ Declaratory or original precedent - A declaratory precedent is one which is merely the application of an already existing rule of law.

24.

What is ratio decidendi?

Ans →

The Ratio decidendi literally means 'reason for deciding'. The ratio decidendi is "the point in case that determines the judgement" or "the principle that the case establishes". In other words ratio decidendi is a legal rule derived from, and consistent with, those parts of legal reasoning within a judgement on which the outcome of the case depends.

25.

What is obiter dicta?

Ans →

Obiter dictum, Latin phrase meaning "that which is said in passing", an incidental statement.

Obiter dicta is a comment, suggestion, or observation made by a judge in an opinion that is not necessary to resolve the case, and as such, it is not legally binding on other courts.

26.

Define Custom.

Ans →

Custom is one of the most fruitful sources of law. "Custom is to society what law is to the state."

A custom, to be valid, must be observed continuously for a very long time without any interruption. Further, a practice must be supported not only for long time but it also supported by general public.

27. What is General custom?

Ans → Where a custom is observed by all the members of a society, it is a general custom.

28. Define custom and explain the essentials of a valid custom.

Ans → Where a custom is observed only by residents of particular locality is a local custom. A custom is a way of behaving in traditional or ancient method. A local custom becomes valid and operates as a source of law only if it is reasonable and is of immemorial antiquity having a continuity, is capable of peaceful enjoyment and is not inconsistent with statute, and is observed as of right.

For a valid custom; a local custom must satisfy these seven requirements-

- (1) Reasonableness
- (2) Immemorial antiquity
- (3) Opinio necessitatis
- (4) Conformity with statute law
- (5) Conformity with common law
- (6) Continuity
- (7) Peaceful enjoyment.

29. What is a legal right? What are the characteristics of legal right and explain different kinds of legal rights.

Ans

According to Salmond, legal right is an interest, recognised and protected by a rule of law.

→ Every legal right possesses the following five characteristics -

1. There is a person who is the owner of the right. He is the subject of the legal right.
2. Under legal right accrues against another person, who are under a corresponding duty to respect that right. Such a person is called the person of incidence.
3. Next is the content or substance of the legal right. It may be an act which the subject of incidence is bound to do or it may be a forbearance on his part.
4. Then, there is the object of the right. This is the thing over which the right is exercised. This may also be called the subject matter of the right.
5. Lastly, there is the title to the right, i.e. the facts showing how the right vested in the owner of the right. This may be by inheritance, gift, inheritance, assignment, prescription, etc.

→ kinds of legal rights -

- (1) Perfect and imperfect rights
- (2) Real and personal rights
- (3) Public and Private rights
- (4) Inheritable and uninheritable rights
- (5) Proprietary and personal rights

30. (6) Positive and Negative rights  
(7) Right in repropria and right in re aliena

30. Define ownership.

Ans → According to Salmond, "Ownership denotes the relation between a person and an object forming the subject matter of his ownership. It consists in a complex of rights."

31. What are "Trusts"?

Ans → Trusts ownership is an instance of duplicate ownership. Trust property is that which is owned by two persons at the same time, the relation between the two owners being such that one of them is under an obligation to use his ownership for the benefit of the other. The former is called trustee, and his ownership is trust ownership.

32. Define possession and explain the different kinds of possession.

Ans → The acquisition of either a considerable degree of physical control over a physical thing, such as land or chattel, or the legal right to control intangible property.

kinds of possession -

- (1) Incorporeal possession - Intangible object
- (2) Mediate possession -



- (3) Immediate possession
- (4) Constructive possession
- (5) De facto possession
- (6) De jure possession
- (7) Adverse possession
- (8) Corporeal possession - tangible object

33. Distinguish between possession and ownership.

Ans → Ownership vs possession

- |   |  |
|---|--|
| 1. Ownership involves the absolute rights and legitimate claim to an object. It means to own the object by the owner.   | 1. Possession is more the physical control of an object. The possessor has a better claim to the title of the object than anyone except the owner himself. |
| 2. Ownership is the right of the owner against the world indefinite in point of time, unrestricted in point of disposition or destroying and unlimited in point of duration over a thing. | 2. As per the definition it is the continuous exercise of a claim to exclusively possess and use the object or thing.                                      |
| 3. Ownership itself gives the owner the right to possession.  | 3. However it does not indicate the rights to ownership.   |

34. Write a short note on: Title.

Ans → Title is a link between a person and an object to establish ownership of property. A title is the de facto antecedent of which the right is the de jure consequent.

Titles are of two kinds: Original or derivative.

Original titles are those that create a right de novo (i.e., for the first time) whereas,

derivative titles are those that transfer an existing right to a new owner.

Facts establishing title are three kinds:

(1) Vestitive

(2) Investitive

(3) Divestitive

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35. Discuss the nature and kinds of liability.

Ans → Liability means and signifies responsibility for an act or omission. Thus, he who commits a wrong is said to be liable for it. According to Salmond, liability is the bond of necessity that exist between the wrong doer and the remedy for the wrong. This remedy may be either civil or criminal and thus, liability may be civil liability or criminal liability.

In case of civil liability, the party

who is wronged is entitled to the redress allowed by law, whereas in cases of criminal liability, the wrongdoer is made to undergo the penalty prescribed for the wrong.

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36: Write a short note on: obligation.

Ans → According to Holland, an obligation is a tie, where by one person is bound to perform some act for the benefit of another.

An obligation may be regarded both as a right and as a duty. It is a right from the point of view of person entitled to it, whereas it is duty from the point of view of the person who is bound to respect the right or fulfil the duty.

Kind of obligations:

- (i) Contractual obligation
- (ii) Delictual obligation
- (iii) Quasi-Contractual obligation
- (iv) Innominate obligation.

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37: Explain the term "person".

Ans → According to Salmond "A person is any being whom the law regards as capable of rights or duties." Under the IPC the word "Person" includes any company or body of persons whether incorporate or not

38. State two kinds of corporation?

Ans → A corporation is a group or series of persons which, by a legal fiction is regarded and treated as a person. Corporations are of two kinds:-

- (1) Corporations aggregate
- (2) Corporations sole

(1) Corporations aggregate - It is a group of co-existing persons. Corporations aggregate have several members at a time.

(2) Corporations sole - A corporations sole consists of an incorporated series of successive persons. Corporations sole has only one member at a time.

39. Discuss the 'Personality' and examine the personality of (i) minors (ii) persons of unsound mind and (iii) dead person.

Ans → Personality in jurisprudence - A right and duty bearing unit. Personality should be distinguish from humanity. In legal term Personality in law involves two element. First to whom law recognize as persons and second is to what is the extent of rights and duties of legal persons.

### 40. Define property and kinds of property.

Ans → The right and interest which a man has in lands and chattles to the exclusion of others. It is the right to enjoy and to dispose of certain things.

Kinds of property: -

- (1) Corporeal and Incorporeal
- (2) Movable and Immovable
- (3) Real and personal
- (4) Tangible or Intangible.

### The Ends

Subject Matter