

LL.B. VI Term

Paper - LB – 602 Jurisprudence – II (Concepts)

The significance of the study of Jurisprudence lies in the opportunity for lawyers to bring theory and life into focus as it concerns human thought in relation to society. This part of Jurisprudence deals with certain concepts which are the mainstay of law as a system, its administration and adjudication. These concepts recur every day in law, its administration and adjudication. Judges, lawyers, legislators and administrators have to constantly understand the jurisprudential basis of these concepts which are continuously being dealt with in law in all its manifestations. The reading materials being provided are original writings by various thinkers who have thrown light on the understanding and implication of these concepts.

Prescribed Books :

1. P.J. Fitzgerald, *Salmond on Jurisprudence* (12th ed., 1966)
2. R.W.M. Dias, *Jurisprudence* (5th ed., 1994)
3. David P. Derham (ed.), *A Textbook of Jurisprudence* by G.W. Paton (4th ed., 1972)
4. Lloyd's *Introduction to Jurisprudence* (7th ed., 2001)

Topic 1 : The Concept of Rights and Duties : Jurisprudential Analysis

Hohfeld's analysis of the concept of 'rights' is considered as a landmark analysis. You are expected to use the analysis in understanding various constitutional and statutory provisions in India. The analysis can also be used to understand the rationale behind various judgments delivered by the esteemed Judiciary.

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| (a) | Hohfeld's Contributions to the Science of Law
Walter Wheeler Cook (ed.), <i>Fundamental Legal Conceptions -as Applied in Judicial Reasoning and Other Legal Essays</i> by Wesley Newcomb Hohfeld, pp. 1-15 (1919) | 1 |
| (b) | "Legal Conceptions contrasted with Non-legal Conceptions", <i>id.</i> , pp. 27-73 | 8 |
| (c) | Jural Relations
R.W.M. Dias, <i>Jurisprudence</i> pp. 23-43 (1994) | 28 |
| (d) | Upendra Baxi, "Laches and the Right to Constitutional Remedies: <i>Quis Custodiet Ipsos Custodes?</i> ", Alice Jacob (ed.) <i>Constitutional Developments since Independence</i> (1975) | |

Topic 2 : The Concept of Right and Duties : Philosophical Analysis

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| (a) | Bhikhu Parekh, "The Modern Conception of Right and Marxist Critique" in Upendra Baxi (ed.), <i>The Right to be Human</i> 1-22 (1987) | 41 |
| (b) | Upendra Baxi, "From Human Rights to The Right to be Human : Some Heresies", <i>id.</i> pp. 185-199 | 57 |
| (c) | Allen Buchanan, "What is so Special about Rights" <i>Social Policy & Philosophy</i> 61-75 (1984) | 66 |
| (d) | Amartya Sen, "Culture and Human Rights" in <i>Development as Freedom</i> , Chapter 10, pp. 227-48 (2000) | 81 |

Topic 3 : Feminist Legal Theory

The Constitution of India, 1950 guarantees right to equality to women yet numerous areas can be identified where women are discriminated. The last few decades have witnessed the impact of feminist critical approaches on social, economic, political and legal institutions. One must correlate the jurisprudential analysis of rights of women with the prevailing customs, laws and precedents in India and determine whether equality for women is a reality or myth.

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| (a) | Susan Edwards, <i>Sex, Gender and Legal Process</i> 1-25 (Mimeo) | 95 |
| (b) | Indira Jaising, "Gender Justice and the Supreme Court" in B.N. Kirpal <i>et al</i> (eds.) <i>Supreme But Not Infallible - Essays in Honour of the Supreme Court of India</i> pp 289-319 (2000). | 102 |
| (c) | Feminist Jurisprudence from <i>Lloyd's Introduction to Jurisprudence</i> pp 41-47 (2001) | |

Topic 4 : Liability – Civil and Criminal

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| (a) | Liability
P.J. Fitzgerald, <i>Salmond on Jurisprudence</i> , pp. 349-410 | 117 |
| (b) | Civil and Criminal Justice
P.J. Fitzgerald, <i>id.</i> , pp. 91-106 | 153 |

Topic 5 : Personality

Theories of the Nature of Legal Persons

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| (a) | R.W.M. Dias, <i>Jurisprudence</i> , pp. 265-270 | 163 |
| (b) | A.A. Berle, "The Theory of Enterprise Entity", 47 <i>Columbia L. Rev.</i> 343-58 (1980) | |
| (c) | A.K. Koul, "The Multinational Corporations : Bonanza or Source of Illusion for the Economics of the Developing Countries", <i>Rev. of Contemporary Law</i> 231-46 (1980) | |

Topic 6 : Possession

P.J. Fitzgerald, <i>Salmond on Jurisprudence</i> , pp. 265-295	168
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Important Note:

1. The topics and materials given above are not exhaustive. The teachers teaching the course shall be at liberty to add new topics/materials.
2. The students are required to study latest editions of books and available materials.
3. The Question Paper shall include one compulsory question consisting of *five* parts out of which *four* parts will be required to be attempted. The Question paper set for the academic year 2008-09 is printed below for guidance.

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LL.B. Exams (Supplementary), May-June, 2008

Jurisprudence

Note: Answer any *five* questions including Question No. 1 which is compulsory.
All questions carry equal marks.

1. Write short answer on any *four*, not exceeding *150* words:
 - (a) Legal personality of a foetus.
 - (b) Natural Rights, Fundamental Rights, Human Rights and Legal Rights although appear to be separate and different. Discuss.
 - (c) Hohfeld's analysis of Duties towards the state and society.
 - (d) How Buchanan finds merit in the claim 'that part of what is distinctively valuable about right is that they may be involved or not invoked or waived':
 - (e) Analyse Art 368 of Indian Constitution so as to focus on the usefulness of Hohfeldian analysis in constitutional interpretation.