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EDITION

FHT OU LLB
All In One Books
3YDC-3rd Sem

Page Number Wise- Subjects

“in this all in one book ,for each subject we will cover following things for easy exam preparation”

1. Unit Syllabus Wise- Short Notes
2. Model Answers to Case Law Questions
3. Last Minute Revision Notes

Jurisprudence Unit-1

By Few Helping Turtles

Unit-1 Syllabus

Meaning and Definition of Jurisprudence – General and Particular Jurisprudence – Elements of Ancient Indian Jurisprudence – Schools of Jurisprudence – Analytical, Historical, Philosophical and Sociological Schools of Jurisprudence. Theories of Law – Meaning and Definition of Law – The Nature and Function of Law – The Purpose of Law – The Classification of Law – Equity, Law and Justice – Theory of Sovereignty.

1.1 Meaning, Nature, and Scope of Jurisprudence.

A. Etymological Origin The term "Jurisprudence" is derived from the Latin words 'juris', which means law, and 'prudentia', which means knowledge, skill, or foresight. Therefore, in its etymological sense, jurisprudence signifies the knowledge of law or the skill in law. It encompasses the entire body of legal principles in the world. However, its meaning has evolved and been interpreted differently by various jurists over time.

B. Definitions by Jurists There is no single, universally accepted definition of jurisprudence. Jurists from different schools of thought have defined it based on their own perspectives and the societal context of their time.

- **Ulpian:** The Roman jurist defined jurisprudence as "the observation of things human and divine, the knowledge of the just and the unjust." This definition, from ancient times, is broad and mixes legal, moral, and religious precepts.
- **Salmond:** Salmond defined jurisprudence as "the science of the first principles of the civil law." For him, it deals with the fundamental principles that form the basis of a specific legal system, not universal legal rules. He distinguished between jurisprudence in the generic sense (science of civil law) and the specific sense (science of the first principles of civil law).
- **John Austin:** As a leading proponent of the analytical school, Austin defined jurisprudence as "the philosophy of positive law." He was concerned with the law as it is ('lex lata') and not as it ought to be ('de lege ferenda'). He was the first to demarcate the scope of jurisprudence, limiting it to the scientific study of the existing legal system.

★ 1.1.2 The Nature of Jurisprudence

A. Jurisprudence as a Science Jurisprudence is often called the science of law. This is because it involves the systematic and scientific study of the fundamental principles that underlie a legal system. Like a science, it proceeds by observing facts, analyzing them, and deriving general principles. However, it is considered a social science, not a natural or physical science. Its principles are not universally applicable like scientific laws because they are concerned with human behaviour and social norms, which vary across different societies and times.

Case Law Model Answer- Jurisprudence

**** These are model answers, so read these to get an idea on how can we attempt these case law questions in the semester exams, then write your own answers by including what we read from above subject notes**

Q. A manufacturer, who employs workmen, has the knowledge that some accident might take place which might kill a workman. A workman becomes victim of the accident. Whether the manufacturer will be liable for the intention for this injury to the workman.

1. Issue

The central legal question is whether a manufacturer can be held liable for the 'intention' to cause a workman's death, when the manufacturer possessed prior knowledge that an accident, which could be fatal, might occur at the workplace.

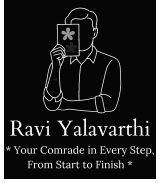
2. Rule

The determination of liability in this case hinges on the concept of *mens rea* (the mental element) in criminal law, specifically the distinction between 'intention' and 'knowledge' under the Indian Penal Code, 1860 (IPC).

- **Section 299, Indian Penal Code, 1860:** This section defines "culpable homicide." An act is considered culpable homicide if it is done with: a) the intention of causing death; or b) the intention of causing such bodily injury as is likely to cause death; or c) the knowledge that the act is likely to cause death.
- **Section 300, Indian Penal Code, 1860:** This section defines "murder." It states that culpable homicide is murder if the act by which the death is caused is done with the intention of causing death. Clause (4) of this section is particularly relevant, which classifies an act as murder if "the person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk."
- **Section 304A, Indian Penal Code, 1860:** This section addresses "causing death by negligence." It states, "Whoever causes the death of any person by doing any rash or negligent act not amounting to culpable homicide, shall be punished..." This applies where there is neither intention nor knowledge, but the death is a result of a rash or negligent act.

Judicial Precedents:

- **Gyaniswar v. State of Bihar:** The Supreme Court distinguished between intention and knowledge. It held that 'intention' refers to a purposeful action aimed at achieving a specific outcome. 'Knowledge,' in contrast, is an awareness of the potential consequences of an action, without necessarily desiring that outcome.



Revision Notes- Jurisprudence

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6 Mark Questions

Sno	Topic	Short Revision Notes
1	**Custom as a source of Law**	Custom refers to long-established practices or unwritten rules that have acquired binding legal force. For a custom to be valid, it must be ancient, continuous, reasonable, certain, and not opposed to public policy or statute. It is considered a primary source of law, especially in personal laws like Hindu Law.
2	**Natural Law**	This theory posits that law is based on universal moral principles inherent in human nature and discoverable through reason. It suggests that an unjust law (*lex injusta non est lex*) is not a true law. Key proponents include Aquinas and Fuller. In India, it influences constitutional principles like justice, fairness, and reasonableness (e.g., Article 21).
3	**Precedent**	Also known as *stare decisis*, it is a source of law where judicial decisions in past cases serve as binding authority for future cases with similar facts. In India, under Article 141, the decisions of the Supreme Court are binding on all lower courts. Precedents ensure consistency, predictability, and certainty in law.
4	**Possessory Remedies**	These are legal remedies available to a person who has been wrongfully dispossessed of property, allowing them to recover possession without having to prove title. The focus is on restoring the *status quo*. Section 6 of the Specific Relief Act, 1963, is a key example, providing a summary procedure to recover possession of immovable property.
5	**Privilege and Immunity**	**Privilege** is a special legal right or advantage granted to a person or group (e.g., lawyer-client privilege). **Immunity** is an exemption from legal duties, penalties, or prosecution (e.g., diplomatic immunity, presidential immunity). Both are exceptions to the general application of law.
6	**Reformative Theory**	A theory of punishment that emphasizes the rehabilitation of the offender. The objective is not just to punish but to reform the criminal into a law-abiding citizen through education, treatment, and vocational training. It is a key aspect of modern penology, influencing policies on probation, parole, and open prisons.
7	**Volksgeist**	A concept from Savigny's Historical School of Law, meaning "spirit of the people." It posits that law is not made but found, originating from the common consciousness, customs, and beliefs of a particular people. Law grows and evolves with the nation, reflecting its unique culture and character.
8	**Codification**	The process of systematically collecting, arranging, and writing down the laws of a state or on a particular subject into a code. It aims to make the law certain, simple, and accessible. Examples in India include the Indian Penal Code (IPC) and the Indian Contract Act.