

7.4 Course – IV, Jurisprudence

Objectives:

Any academic discipline, worthy of the name, must develop in the student the capacity for critical thought. Legal education needs to teach both law and its context- social, political and theoretical.

At the heart of legal enterprise is the concept of law. Without deep understanding of this concept neither legal practice nor legal education can be a purposive activity. This course in Jurisprudence is designed, primarily, to induct students into a realm of questions concerning nature of law. Therefore, the first part of the course is concerned with important questions like, what is law, what are the purposes of law?, the relationship between law and justice and the like. The second part is concerned with the important sources of law. The emphasis is on important issues concerning law with reference to ancient and modern Indian Legal Thought.

One important branch of Jurisprudence consists in analysis of legal concepts. The law of contract and tort is concerned with different rights which one person may have against another. Jurisprudence, on the other hand, studies the meaning of the term “rights” in the abstract and seeks to distinguish various kinds of rights which are in theory possible under a legal system. Similarly, it investigates other legal concepts and tries to build up a general and more comprehensive picture of each concept as a whole. This course is designed primarily on English model but native India Orientation is given wherever possible.

Course outcomes:

On successful completion of this course student will be able to:

1. demonstrate an advanced and integrated understanding of the political, social, historical, philosophical, and economic context of law.
2. engage in identification, articulation and critical evaluation of legal theory and the implications for policy.
3. critically analyze and research complex problems relating to law and legal theory and make reasoned and appropriate choices amongst alternatives.

Contents:

UNIT – I

Meaning and nature of ‘Jurisprudence’ - Purpose and value of Jurisprudence -Schools of Jurisprudence: Natural law, Imperative Theory, Legal Realism, Sociological school, Law as a system of Rules.

UNIT – II

Functions and purpose of law, questions of law, fact and discretion - Justice and its kinds - Civil and Criminal Administration of Justice - Theories of Punishment and Secondary functions of

the Court.

UNIT – III

Sources of Law: Legislation, Precedent and Custom - A Comparative study

UNIT – IV

Legal Concepts: Right and Duty, Kinds, Meaning of Right in its wider sense; titles, Possession: Idea of Ownership, kinds of Ownership, Difference between Possession and Ownership; Nature of Personality, legal status of the lower animals, Status of the Unborn, Minor, Lunatic, Drunken and Dead Persons, double capacity and double personality, acts and liabilities of corporations.

UNIT – V

Liability: Conditions for imposing liability - Wrongful act: *Damnum Sine Injuria*, causation, *mensrea*, intention, malice, negligence and recklessness, strict liability, vicarious liability, the Law of Property, obligation, the law of procedure.

Prescribed Books:

Fitzgerald – Salmond on Jurisprudence.

R. W. M. Dias – Jurisprudence

Reference Books:

W. Friedman – Legal Theory

V. D. Mahajan – Jurisprudence and Legal Theory

Paton – Jurisprudence

Edgar Bodenheimer – Jurisprudence