

CORE COURSE 208 LEGAL METHODS & LEGAL THEORIES (Jurisprudence)

OBJECTIVE OF THE COURSE:

At the heart of the legal enterprise is the concept of law. Without a deep understanding of this concept neither legal education nor legal practice can be a purposive activity oriented towards attainment of justice in society. Moreover, without a comprehension of the cognitive and teleological foundations of the discipline, pedagogy becomes a mere teaching of the rules. It is unable to present various statutes, cases procedure, practices and customs as a systematic body of knowledge, nor is it able to show the inter-connection between these various branches of law, procedures and principles. The fact that the basic nature and purpose of law should be clear to every student and that it should be the very foundation of law teaching needs little argument. A course in jurisprudence should, primarily, induct the student into a realm of questions concerning law so that he is able to live with their perplexity or complexity and is driven to seek out answers for himself.

It may not be possible that a one year jurisprudence course can impart knowledge of doctrines about law and justice, developed over the years, in various nations and historical situations. At best an undergraduate course should impart the analytical skill and equip the student with the basic problems concerning law and the types of solutions sought. Thus the student not only will be able to use this skill in practice but also is motivated to take up detailed historical studies on his own after the course. Since a basic idea in the designation of this course is to bring jurisprudence closer to our reality, in the selection of cases and reading materials the teachers should try to make use of the Indian materials as far as possible.

SYLLABUS:

1. Introduction and sources of Law

- 1.1 Meaning of the term 'jurisprudence', Importance
- 1.2 Nature and definition of law, Relation between: Law and Morality, Law and Justice
- 1.3 Sources of law: Legislation, custom, Precedents: concept of stare decisis, Juristic writings

2. Schools of Jurisprudence

- 2.1 Analytical positivism: Bentham and Austin's view, Criticism of Austin's theory of positivism
- 2.2 Natural law School, Historical school, Sociological School
- 2.3 Kelson's Pure Theory of Law, H.L.A. Hart's Theory

3. Legal Rights, duties, persons, Titles, liabilities etc.:

- 3.1 Rights, Duties and Wrongs: Definitions and relationship, Rights: kinds, Legal Rights as defined by Hohfeld, Right-Duty Correlations
- 3.2 Nature of personality, types of persons: Natural and artificial persons
- 3.3 Corporate personality: Corporation sole and aggregate, Rights & liabilities
- 3.4 Status of the unborn, minor, lunatic, drunken and dead persons
- 3.5 Titles: kinds
- 3.6 Liabilities: conditions for imposing liabilities, Mens rea, Intention, negligence, vicarious liability, Strict Liability,
- 3.7 Theories of punishment

4. Ownership, Possession and Property:

- 4.1 Possession: Definition, concept and importance
- 4.2 Kinds of possession, Essentials of possession: Corpus Possessiones and Animus Possidendi
- 4.3 Ownership: Definition, concept, kinds of ownership
- 4.4 Distinction between ownership and possession, Kinds of property

Suggested Reading:

1. Bodenheimer Jurisprudence - The Philosophy and Method of Law (1996), Universal. Delhi.
2. Fitzgerald, (ed) Salmond on Jurisprudence, Tripathi, Bombay.
3. W. Friedmann, Legal Theory, Universal, Delhi,
4. V. D. Mahajan, Jurisprudence and Legal Theory, Eastern, Lucknow M.D.A. Freeman (ed), Lloyd's Introduction to Jurisprudence, Sweet & Maxwell Paton G. W., Jurisprudence Oxford, ELBS
5. H.L.A. Hart the concept of law, Oxford, ELBS
6. Roscoe Pound introduction to the philosophy of Law, Universal Delhi
7. Dias, Jurisprudence, Adithya Books New Delhi.
8. Dhyani S.N. Jurisprudence A Study of Indian Legal Theory, Metropolitan, New Delhi.