

RMM LAW COLLEGE SAHARSA

JURISPRUDENCE

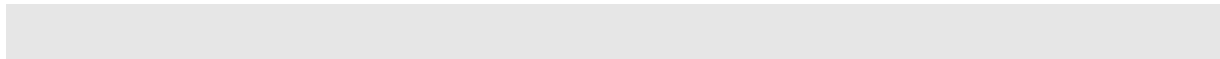
Part I

Paper -1

Topic- Rights

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There can be no duty without a right and According to Hibbert “a right is one person’s capacity of obliging others to do or forbear by means not of his own strength but by the strength of a third party. If such third party is God, the right is Divine. If such third party is the public generally acting through opinion, the right is moral. If such third party is the state acting directly or indirectly, the right is legal.”

Definition Of Legal Right

The term legal right has been used in two senses:

Restricted Or Popular Sense:

According to Gray: A legal right is that power which a man has to take a person or person do or refrain from doing a certain act or certain acts, so far as the power arises from society imposing a legal duty upon a person or persons.

Wider**Sense:**

In a wide sense, legal right include any legally recognized interest whether it corresponds to a legal duty or not. It is an addition or benefit conferred upon a person by a rule of law.

Kinds Of Legal Rights:

Following are the kinds of legal rights:

- Perfect right
- Imperfect right
- Real And Personal Rights
- Rights In Rem And Rights In Personam
- Proprietary And Personal Rights
- Inheritable And Uninheritable Rights
- Rights In Re Propria And Rights In Re Aliena
- Principal And Accessory Rights
- Legal And Equitable Rights
- Primary And Secondary Rights
- Public And Private Rights

- Vested And Contingent Rights
- Servient And Dominant Rights
- Municipal And International Rights
- Rights At Rest And Rights In Motion
- Ordinary And Fundamental Rights
- Jus Ad Rem

Perfect right:

According to salmond, a perfect right is one which corresponds to a perfect duty I .e., which is enforced by law.

Example:

A contract specically enforceable through the Court of law is an example of perfect right.

Imperfect right:

An imperfect right is that which is recognized by law but cannot be enforced by law due to some impediment. These may be turn into perfect rights.

- **Positive right:**
A positive right corresponds positive duty and the person subject to the duty is bound to do something.
- **Negative right:**
Negative right corresponds to negative duties. The enjoyment of negative rights is complete unless such interference takes place.

Real And Personal Rights:

- **Real** **right:**

According to Salmond, a real right corresponds to a duty imposed upon persons in general. It is available against the whole world. Real rights are generally negative rights as the duties which can be expected from the whole world are of a negative character.

Example:

I have a right to be deprived of my life is a real right as it is available against the whole world.

- **Personal** **right:**

A personal right corresponds to a duty imposed upon determinate individuals. It is against a particular person. Personal rights are generally positive rights as they impose a duty on a particular person to do something.

Example:

I have a personal right to receive compensation from any individual who has harmed me.

Rights In Rem And Rights In Personam:

- **Rights** **in** **Rem:**

It is derived from the Roman term "action in Rem". It is available to the whole world. Examples are rights of ownership and possession. My right of possession and ownership is protected by law against all those who may interfere with the same.

- **Rights** **in** **Personam:**

It is derived from the Roman term "action in personam," Right in personam corresponds to a duty imposed upon determinate persons.

Example:

Rights under a contract are rights in Personam as the parties to the contract alone are bound by it.

Proprietary And Personal Rights:

- **Proprietary** **Right:**
The proprietary rights of a person include his estate, his assets and his property in many forms. They have some economic or monetary value. They possess both judicial and economic importance.
Example:
The right to debt, the right to goodwill etc.
- **Personal** **right:**
Personal right pertain to man, s status or standing in the law. They promote the man, s well being. Personal rights possess merely judicial importance.
Example:
Right to life, reputation etc are personal rights.
- **Inheritable** **Rights:**
Inheritable rights are those which survives its owners.
Example:
'A' dies leaves his property him 'B' his legal heir becomes owner of such property. This is an inheritable right.
- **Uninheritable** **right:**
A right is uninheritable if it dies with its owners e. g. personal rights die with its owner and cannot be inherit.

Rights In Repropria And Rights In Re Aliena:

- **Rights** **in** **Re** **Propria:**
Rights in Re propria are rights in one, s own property. These are complete rights to

which other right can be attached.

Example:

The owner of a chattel has a right in re propria over it.

- **Right in Re aliena:**

Rights in Re aliena are rights over the property of another person. These rights derogate from the rights of another person and add to the rights of their holder.

Example:

My right of way across the land another person is a right re aliena.

Principal And Accessory Rights:

- **Principal rights**

Principal rights exist independently of other rights. Accessory rights are appurtenant to other rights and they have a beneficial on the principal rights.

Example:

'X' owes money to 'Y' and he executes a mortgage deed in favour of 'Y'. the debt is the principal right and the security in the form of mortgage is the accessory right.

Legal And Equitable Rights:

- **Legal Rights:**

Legal rights are those which were recognized by common Law Court e. g., right to vote etc.

- **Equitable Rights:**

Equitable rights are those which were recognized by the Court of chancery.

Example:

The right of the mortgagor to redeem the property is regarded as a creation of the Courts of equity and is an equitable right known as the equity of redemption.

Primary And Secondary Rights:

- **Primary** **Rights:**
Primary rights are also called antecedent, sanctioned or enjoyment rights. These are those rights which are independent of a wrong having been committed. They exist for own sake. They are antecedent to be wrongful act or omission.
Example:
Right of reputation, Right to life etc.
- **Secondary** **Rights:**
Secondary rights are also called sanctioning, restitutory or remedial rights. Secondary rights are a part of the machinery provided by the state of the redress of injury done to the primary rights. Their necessity arises on account of the fact that primary rights are very often violated by the persons.
Example:
Rights to obtain compensation for defamation to person.

Public And Private Rights: Public rights:

- **Public** **rights:**
A public right is possessed by every member of the public. It is between a state and the private individual e. g. , right to vote etc.
- **Private** **right:**
A private right is concerned only with the individuals. Both the parties connected with the right are private persons e.g., contract entered into by two individuals.

Vested And Contingent Rights:

- **Vested** **right:**
A vested is a right in right in respect of which all events necessary to vest it completely

in the owner have happened. No other conditions remains to be satisfied.

Example:

If a valid deed of transfer is executed by ;A; in favour of 'B', 'B' acquires a vested right.

• **Contingent** **right:**

According to paton when part of the in vestitive acts have occurred, the right is contingent until the appening of all the facts on which the title depends.

Example:

'A' executes a deed in favour of 'B' according to which he entitles to the possession of certain property when attains the age of 21, the right is contingent right and it will be vested only when he attains the age of 21.s

Servient And Dominant Rights:

A servient right is one which is subject to an encumbrance. The encumbrance which derogates form it may be contrasted as dominant.

Example:

"X" as the owner of certain house a right of way over the land of 'Y' , his neighbor. The house of 'X' is the dominant heritage and 'X' is the dominant owner. The house of 'Y' is the servient heritage and 'Y' is the servient owner.

Municipal And International Rights:

• **Municipal** **rights:**

Municipal right are conferred by the law of a country, it is enjoyed by the individuals living in a country.

• **International** **rights:**

International rights are conferred by international law. The subject of the International rights are the persons recognized as such by International law.

Rights At Rest And Rights In Motion:

According to Holland, when a right is stated with reference to its 'orbit' and its "infringement", it is a right at rest. "Orbit" means the extent of advantages conferred by such right and infringement means an act which interference with the enjoyment of those advantages. Causes by which rights are either connected or disconnected with persons are discussed under rights in motion.

Ordinary And Fundamental Rights:

Some rights are ordinary and some are fundamental rights. The distinction between the two lies that fundamental rights are often guaranteed by the constitution i. e., right to life, liberty etc.

Jus Ad Rem:

A jus ad rem is a right to right. It is always a right in personam.

Example:

If 'A' sell his house to 'B'. 'B' acquires a right against 'A' to have the house transferred to himself.