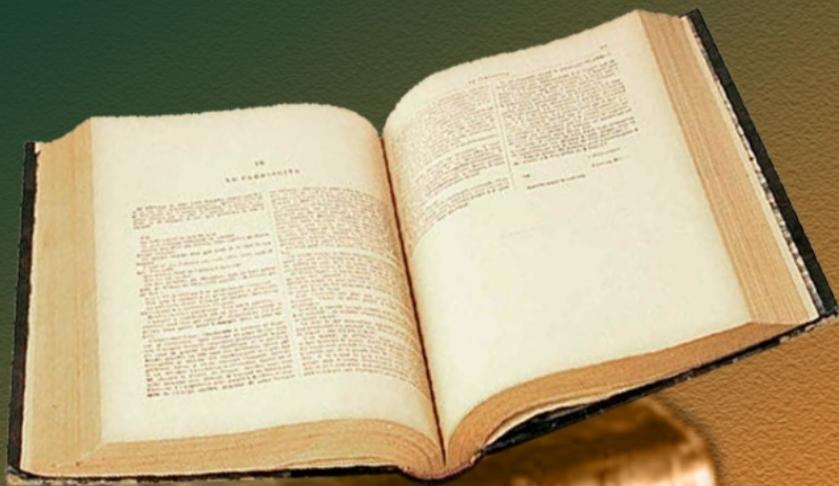




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**Objective Questions with Answers**

**ABHINAV MISRA**

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*By*

*Abhinav Misra*

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# **Jurisprudence**

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## CHAPTER-1

# Nature and Concept

The word Jurisprudence is made from two words or it is a combination of two Latin words Juris and prudentia. Meaning of Juris is law and meaning of prudentia is knowledge. Clearly meaning of Jurisprudence is knowledge of law. The Study of Jurisprudence started among Romans at first.

### Definition

1. **Ulpian**—Ulpian was a Roman Jurist, according to him Jurisprudence is the knowledge of things, divine and human, the science of right and wrong.

This definition is similar to the definition of Dharma of Hindu philosophy.

According to Jaimini Dharma is that which is signified by a command and leads to man's material and spiritual salvation.

Yajnavalkya has defined that "Vyavahara, means those rules which determine the Judicial Proceeding".

2. According to Holland, Jurisprudence is the formal science of positive law. According to him formal science is a science which deals with the various relations which are regulated by legal rules.

**Definition by Salmond**—According to Salmond, Jurisprudence is the Science of law, and law means civil law. In this sense Jurisprudence has three kinds—

- (i) Expository or Systematic
- (ii) Legal history
- (iii) Science of legislation

Salmond makes a difference between General and Specific Jurisprudence. According to him General Jurisprudence includes the General group of principles of law.

**Branches of Jurisprudence**—Jurisprudence can be classified into three groups—

- (a) Analytical
- (b) Historical
- (c) Ethical

(i) **Definition by Gray**—According to Gray, it is the systematic arrangement of rules followed by Courts and principles underlying them.

**Criticism of Gray**—According to Stone, Gray has failed to determine any province of Jurisprudence rather he has reduced Jurisprudence to merely a matter of arrangement of rules.

According to Keeton, Jurisprudence is the Study and systematic arrangement of General principals of laws.

**Definition by E.M. Patterson**—Jurisprudence means a body of ordered knowledge, which deals with a particular species of law.

### Use of Jurisprudence

Jurisprudence is supposed as a theoretical topic and it is also that this has no practical importance but according to Salmond it has its own intrinsic importance and interest.

**Practical ability**—Jurisprudence serves to render the complexities of law more manageable and reasonable and in this way this can help to improve practice in law.

**According to Holland**—The Jurisprudence is the ever reviewed complexity of human relations calls for an increasing complexity of legal details, till a merely empirical knowledge of law becomes impossible.

**According to Dias**—The study of Jurisprudence provides an opportunity for the lawyer to bring theory and life into focus, for it concerns human thought in relation to social existence.

**Other Basic Uses of Jurisprudence are**—(i) Jurisprudence provides scientific development law.

(ii) Jurisprudence provides help to judges and lawyers in ascertaining the meaning of words and expressions in statutes.

(iii) It provides an epistemology of law.

(iv) Jurisprudence gives an idea of the nature of law.

## Objective Questions

1. According to whom Jurist Jurisprudence is the knowledge of just and unjust ?  
(A) Ulpian (B) Gray  
(C) Salmond (D) Hobbes
2. According to whom Jurist Jurisprudence is a science ?  
(A) Ulpian (B) Gray  
(C) Salmond (D) None
3. According to whom Jurisprudence is science of the principles of the civil law ?  
(A) Ulpian (B) Gray  
(C) Salmond (D) None
4. Who calls the Jurisprudence as philosophy of positive law ?  
(A) Ulpian (B) Gray  
(C) Austin (D) Holland
5. Who defines Jurisprudence as the formal science of positive law ?  
(A) Ulpian (B) Austin  
(C) Holland (D) Allen
6. Who defines Jurisprudence as study of, and systematic arrangement of the general principle of law ?  
(A) Holland (B) Allen  
(C) Keeton (D) Pound
7. According to whom Jurisprudence is the science of law using the term law ?  
(A) Pound (B) Keeton  
(C) Allen (D) Holland
8. According to whom jurisprudence is a part of history, a part of economics and sociology, a part of ethics and a philosophy of life ?  
(A) Pound (B) Keeton  
(C) Radcliffe (D) None
9. According to whom Jurisprudence is a complete scientific treatment of any body of law involves the study of these categories mentioned above ?  
(A) Holland (B) Keeton  
(C) Salmond (D) None
10. According to Ulpian Jurisprudence is—  
Which are correct ?  
1. The Knowledge of things, divine and human  
2. Science of right and wrong
3. Scientific synthesis of the essential principles of law  
(A) 1 (B) 1 and 2  
(C) 1 and 3 (D) 1, 2 and 3
11. According to whom Jurisprudence means a body of ordered knowledge. Which deals with a particular species of law ?  
(A) Dias (B) Keeton  
(C) Patterson (D) Pound
12. According to whom Jurisprudence means a body of ordered knowledge. Which deals with a particular species of law ?  
(A) Patterson (B) Pound  
(C) Keeton (D) Holland
13. According to Salmond, the types of Jurisprudence are—  
(A) One (B) Two  
(C) Six (D) Three
14. According to Salmond, the kinds of Jurisprudence are—  
(A) Expository, legal history, science of legislation  
(B) Civil, Expository, Science of Legislation  
(C) Both (A) and (B)  
(D) None
15. The uses of study of Jurisprudence are—  
(A) It throws light on the basic ideas and fundamental principles of law in a given society  
(B) Supplies an epistemology of law, a theory as to the possibility of genuine knowledge in the legal sphere  
(C) Both (A) and (B)  
(D) None of these
16. Three branches of Jurisprudence are—  
1. Analytical 2. Historical  
3. Economic 4. Ethical  
(A) 1, 2, 3 (B) 1, 2, 4  
(C) 2, 3, 4 (D) 1, 2, 3, 4

### Answers

- |         |         |         |         |         |
|---------|---------|---------|---------|---------|
| 1. (A)  | 2. (B)  | 3. (C)  | 4. (C)  | 5. (C)  |
| 6. (C)  | 7. (A)  | 8. (C)  | 9. (C)  | 10. (B) |
| 11. (A) | 12. (A) | 13. (D) | 14. (A) | 15. (C) |
| 16. (A) |         |         |         |         |

## CHAPTER-2

# Schools of Jurisprudence

Schools of Jurisprudence are—

- (i) Natural Law School
- (ii) Analytical School
- (iii) Historical School
- (iv) Philosophical School
- (v) Sociological School
- (vi) Realist School

### Natural Law School

The rules which have come from God or nature are known as natural law. These are also named as Divine law, Law of God, universal law, unwritten law and law of Nature. It is an appeal to absolute justice.

The natural law philosophy dominated in Greece and by it, it was believed that there is something external to man and it is universal source.

### Definitions of Natural Law

(i) According to Friedmann, the history of natural law is a tale of the search of mankind for absolute justice and its failure.

(ii) According to Black Stone, the natural law being coexistent with mankind emanating from God himself is superior to all other laws. It is binding over all the countries at all the times and no man made law will be valid if it is contrary to the law of nature.

(iii) According to Cohen, it is not a body of actual enacted interpreted law enforced by courts. It is in fact a way of looking at things and a humanistic approach of Judges and Jurists.

### Main Points of Natural Law

1. The Principle Rule of Law (in India and England) and due process (in USA) are based on natural law.

2. It has been used to maintain status quo.

3. These are moral ideals having universal applicability everywhere.

### Classification of Natural Law

Natural law may be classified into four groups—(i) Ancient, (ii) Medieval, (iii) Renaissance, (iv) Modern.

### Ancient Natural Law

The fundamental concept of Natural law is invented in Greek. It was invented by philosophers not by Jurists. Main philosophers were—

(i) **Heraclitus**—Heraclitus provided the fundamental features of natural law at first time. He pointed that the main characteristic of law are reason density and order.

According to Heraclitus, reason is an essential of Natural law.

(ii) **Socrates**—Socrates was one of stoic philosophers. According to Socrates, there is a natural moral law also similar to natural physical law. According to him each and every human personalities possesses in sight and this in sight provides him a capacity to distinguish between goodness and badness. His principle is a plea for Stability and Security.

(iii) **Plato**—Plato was pupil of Socrates. According to him only those persons who are worthy and intelligent person should be the king. The book of Plato is Republic.

(iv) **Aristotle**—According to Aristotle, a man is a part of nature in two ways—

- (1) he is a part of God creation.
- (2) he possesses in sight.

According to his principle reason unaffected by desires are known as natural laws.

Observations of Rescoe Pound about natural law are—

1. Natural law was the result of views and ideas expressed by philosophers not of Jurists.

2. In fact enacted laws were the declared customs, it was not effected by natural laws.

3. Natural law was influenced by politically declared laws and tribal customs which were not differentiated in social order.

(v) **Roman System**—Stoics philosophy had a great influence on the contemporary Roman philosophy. Natural law found an expression in Roman law philosophy through division of Roman law into three, namely—

- (1) Jus Naturale
- (2) Jus Gentium
- (3) Jus Civile

Jus Naturale are laws for all persons but Jus Gentium are laws for foreigners and Jus civile are laws only for citizens.

**Cicero**—Cicero was a Roman Jurist, his famous book is De Legibus.

According to Cicero, “True law is a right reason in agreement with nature, it is of universal application, unchanging and everlasting.

**Hindu System, New era of Natural Law**—Hindu Judicial System is the most ancient Judicial System. It was given by Hindu Sages. The ancient sources was Shruti and Smritis. Reason and Justice also have been considered as Sources.

According to this law is provided by and organised by the God, so it was law of nature.

According to Brahaspati, “Decision should be given according to Shastras and reason.”

According to Manu, “Vedas, Smritis, usages and good conscience are declared sources of Hindu Law.”

### **Dark Ages—(Christian ages)**

St. Augustine and some other fathers expressed views on the natural law.

### **Medieval Natural Law**

The period of medieval natural law is from 12th century to fourteenth century. This is propagated by Christian fathers to establish superiority of church over the state. By using the theory of natural law they establish a new political and legal order and Christianity. St. Augustine, Ambrose and Gregory and other Christian saints establish a new era that Divine law is superior to all other laws.

According to Gierke, the medieval natural law theory centred round two fundamental principles, these are—

(i) Unity derived from God, involving one church, and one empire.

(ii) Supremacy of God made and manmade law, as a part of unity of universe.

### **Main Philosophers of Medieval Period**

**Thomas Aquinas**—Thomas Aquinas was the main philosopher and theologians of medieval ages. Aquinas provided a new theory of natural law. The views of Christian fathers are more logical and systematic. The views of Aquinas are similar to views of Aristotle. According to him, there are four categories of law, these are—

(i) Law of Divine

(ii) Law of Nature, revealed through the reason of man

(iii) Law of God

(iv) Human laws (Now positive law).

### **Renaissance Natural Law Theory**

The development history of natural law is renaissance. The period of renaissance marks a general awakening of new ideas in all fields of knowledge. This period is marked by rationalism and emergence of new ideas in various fields. In other hand the development in the field of trade and commerce created new groups in society, which required more protection from state, and nationalism had developed, due to this concept the state must have sovereign power or due to commulative effect of these trade. Social, commerce developments were created due to this sovereignty of state and supremacy of positive law overthrows the dominance of the Church and new theories was developed. These new theories were propounded by rationalist thinkers such as Machiavelli. Some theories about natural law was propounded by Grotius, Locke, so a social contract forms between concepts.

**What is Social Contract**—This principle is basically provided by Italian Marsilius. According to this concept, in beginning man lived in the natural state. They had no structure means had neither any government nor any law. There was no certain structure about society. After a certain time, men entered into an agreement for protection of property and lives, this agreement was a social

contract and known as *pactum unionis*. And due to this, society came into existence.

Now men entered in a other agreement, which is *pactum subjectionis*, according to this, sovereign power or government came into existence.

**Hugo Grotius (1583 to 1645)**—The reason of Grotius is not similar to the reason of Thomas, in other words Grotius provided a new legal theory on Social Contract, according to this, it is a duty of the sovereign to safeguard the citizens further Grotius says that king should be obeyed in all possible conditions. On this concept Grotius laid the foundations of International law.

**Thomas Hobbes (1558–1679)**—Hobbes theory is also based upon social contract, he made use of natural law to justify the absolute authority. According to Hobbes, man's life in a state of nature was one of fear and selfishness, it was solitary, poor, brutish and short.

According to him the idea of self-preservation and pain are inherent in his nature. A man desires society also. These inclinations induced him to enter into a contract and surrender power and freedom to authority. Natural law can be discovered by reason which decides what a man should do and what he should not do so confirmly he make ideas that sovereign must be bound by morality.

**John Lock (1632–1704)**—During the middle ages the church remained supreme, then Renaissance came and new political theories started, which favoured absolute sovereignty of the state. The state emerged very powerful. It provided to undetermine the importance of the individual. Now a new definition of natural law was compulsory in order to support the individual against power of sovereign. John Lock had given the Revolution of 1688 and the wave of individualism. Lock provided new definitions of social contract and natural law.

John Lock emphasised on the protection of three main rights—

- (i) Right to life
- (ii) Right to liberty
- (iii) Right to property

It is also that Lock's idea about social contract was founded on secular approach to natural law.

The laissez faire theory in economics was derived from his views.

**Jean Rousseau (1712–1778)**—Rousseau provided a new interpretation to social contract and natural law. He explained that social contract is a hypothetical construction of reason not a historical fact.

His natural law belongs for the freedom and equality of men.

### Modern Law School

(a) **Hostility**—During nineteenth century, theories became hostile to natural law. In this various social, economic and political changes had taken place in Europe.

(b) **Revival**—At the last of nineteenth century, natural law theories revives. The basic causes of it was—

- (i) Reaction against legal theories developed in nineteenth century.
- (ii) It was realised that abstract thinking or a priori assumptions were not completely futile.

This theory is known as natural law with a variable content.

### Stammler (1856–1938)

- Stammler was a professor in Germany.
- According to him law may be defined as species of will others regarding, self authoritative and inviolable.
- According to Stammler all positive law is an attempt at just law.
- His concept is known as “natural law with a variable content”.

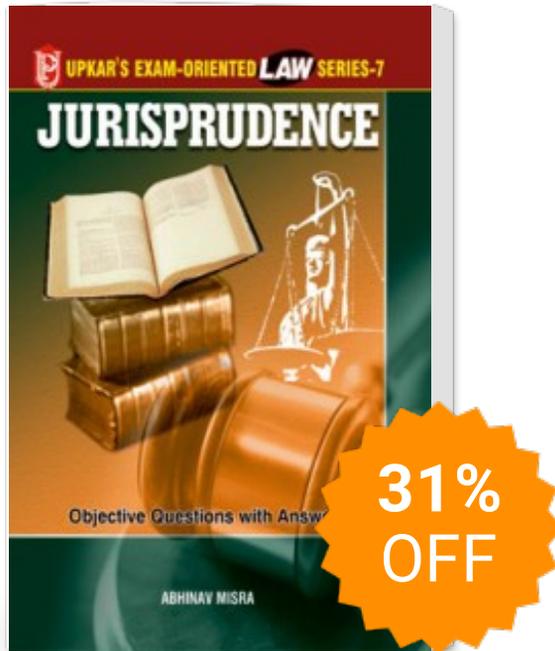
### Rawls

- Rawls propounded two basic principles of natural justice—
  - (i) **Social and economic inequalities**—These should be arranged to provide maximum benefit to the community as whole.
  - (ii) Equality of right to secure opportunities, liberties and power.

### Kohalar

- He is a new Hegalian.
- According to him “law is the standard of conduct which is consequence of the inner impulse that urges upon men towards a reasonable form of life, emanates from the whole and is forced upon the individual.”
- According to him “legal interpretation should not be materialistic.”

# Jurisprudence



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