

LL.B (hons) Semester IV
PAPER 1 JURISPRUDENCE
UNIT - 3

Q.1 "The essence of corporal possession is essentially to be found in the physical power of exclusion." Savigny. Comment critically.

Q.1 (a) Discuss Savigny's concept of possession.

- i) The possession consisted of two ingredients: corpus possessionis (i.e. effective 'physical' control) and animus domini (i.e. intention to hold as owner).
- ii). Possession is both corpus and animus', the permanent loss of one or the other element brought possession to an end.
- iii). In cases in which possession continued although one was lost, he sought to explain them by conceding that the temporary loss of one did not matter, provided it was reproducible at will.

Q.1 (b) Discuss the criticism of Savigny's theory.

- i). It was erroneous to assume that corpus and animus, which were only conditions sometimes required for the acquisition and loss of possession, constituted possession itself.
- ii). Theory does not explain the continued possession of a 'fugitive slave' despite the owner's inability to reproduce the corpus element at will, or the continued possession by a dead man.

Q.1 (c). Differentiate between corporeal and incorporeal possession.

To possess a thing is to have it under physical control- it refers to corporeal possession. Incorporeal possession refers to right to trade marks, copyright, goodwill, etc. where physical control is not there °.

Q.1 (d) Differentiate between mediate and immediate possession.

- i). The immediate possession implies the direct/ primary possession by a person over an object which he acquires or gets directly or personally.
- ii). In case of the possession of a bailee or a custodian, the person on whose behalf the thing is possessed is called a mediate possessor. Thus, if A leaves his car with the driver, the driver's possession will be immediate whereas that of X would be mediate. Examples of mediate possession include: agent, servant, borrower, hirer, securities, etc.

Q.1 (e). Discuss Salmond's concept of possession.

i). He distinguished between (corporeal) possession of physical objects and (incorporeal) possession of rights.

ii). Corporeal possession is "the continuing exercise of a claim to the exclusive use of it", which involves two ingredients: corpus possessionis and animus possidendi. Possession begins only with their union, and lasts only until one or the other of them disappears.

Q.1 a)Discuss Savigny’s concept of possession.

.....
.....
.....
.....
.....
.....

Q.1 (b)Discuss the criticism of Savigny’s theory.

.....
.....
.....
.....
.....
.....
.....

Q.1 (c). Differentiate between corporeal and incorporeal possession.

.....
.....
.....
.....
.....

Q.1(d)Differentiate between mediate and immediate possession.

.....
.....
.....
.....
.....
.....
.....
.....
.....

Q.1 (e). Discuss Salmond’s concept of possession.

.....
.....
.....
.....
.....
.....

Q.2 Discuss the essential elements of Legal Rights.

Q.2(A) Discuss definition of rights by various jurists.

- i). Austin - A right is a 'faculty which resides in a determinate party or parties by virtue of a given law and which avails against a party or parties other than the party or parties in whom it resides'.
- ii). Holland - He regards 'legal right' as the ability possessed by a person to control others' actions, with the assent and assistance of the State.
- iii). Kohler - A legal right is "a relation sanctioned and protected by the legal order".
- iv). Salmond- 'A right is an interest recognised and protected by a rule of right (rule of law). It is an interest, respect for which is a duty and disregard of which is a wrong'.

Q.2 (B) Discuss the theories with respect to rights.

i). Will theory - This theory says that the purpose of law is to grant the individual the means of self-expression or self-assertion. Therefore, right emerges from the human will. The definitions of right given by Austin and Holland lay down that the 'will' is the main element of a right.

ii). Interest theory - Ihering defines legal right as 'a legally protected interest' According to him, the basis of right is 'interest' and not 'will'. Law always has a purpose.

Q. 2 (c) Discuss the essential elements of rights given by Salmond.

(i) The subject or the person of inherence - Subject means the person in whom the right is vested, or the holder of right. There can be no right without a subject, which may be determinate or indeterminate (e.g. society).

(ii) The person bound or the person of incidence - It means the person upon whom falls the correlative duty.

(iii) The act or forbearance - Right relates to some act or forbearance. It obliges a person to act or forbear in favour of the person who is entitled to the right. It is the content of the right.

(iv) The object of right or the res concerned - It is the thing in respect of which the right exists or is exercised. The object or subject matter of right may be material or immaterial, determinate or indeterminate.

(v) Title - Every legal right has a title, i.e. certain facts or events by reason of which the right has become vested in the owner.

Q.2(D) Differentiate between positive and negative rights.

Positive Rights	Negative Rights
A positive right corresponds to a corresponding duty and entitles its owners to have something done for him without the performance of which his enjoyment of the right is imperfect.	Negative rights have negative duties corresponding to them and enjoyment is complete unless interference takes place. Therefore, majority of negative rights are against the entire world.
In the case of positive rights, the person subject to the duty is bound to do something.	Whereas, in case of negative rights, others are restrained to do something.
In case of positive rights, the relation between subject and object is mediate and object is attained with the help of others.	Whereas in case of negative rights, the relation is immediate, there is no necessity of outside help. All that is required is that others should refrain from interfering case of negative rights.

Q.2(E) Describe perfect and imperfect rights.

i). A 'perfect right' means a right which has a correlative perfect duty i.e. duty that can be legally enforced. Generally, when law recognizes a right, it prescribes a remedy also and when the right is violated, it enforces it.

ii). An 'imperfect right' is that right which, although, recognized by law, is not enforceable, such as a time-barred claim.

Exercise 2

Q.2(A) Discuss definition of rights by various jurists.

.....
.....
.....
.....
.....
.....
.....

Q.2 (B) Discuss the theories with respect to rights.

.....
.....
.....
.....
.....
.....
.....

Q. 2 (c) Discuss the essential elements of rights given by Salmond.

.....
.....
.....
.....
.....
.....
.....
.....
.....

Q.2(D)Differentiate between positive and negative rights.

.....
.....
.....
.....
.....
.....
.....
.....
.....

Q.2(D)Differentiate between perfect and imperfect rights.

.....
.....
.....
.....
.....

Q.3'What do you mean by legal person? Discuss the various theories of Corporate personality.

Q.3 (a) Discuss the concept of legal person.

- i).Legal personality is attained when law recognizes a single entity over and above the group of the individuals or the thing which though represents the groups of the individuals or the thing, is distinct from them.
- ii).‘Legal persons’ mean beings and things which are treated as persons by law. Thus, they are created by law only.

Q. 3 (b)Describe double capacity and double personality.

- i).Law recognizes many different capacities in which a man may act. A man may have power to act in an official or representative capacity or he may act in his private capacity or on his own account.
- ii). The fact to be noticed is that if a man has two or more capacities it does not give him the power to enter into a legal transaction with himself.
- iii). Double capacity differs from double personality. Law does not recognize double personality of the individual. For e.g. At common law, a man could not sue himself or contract with himself or convey property to himself even if he was acting on each side in a different capacity.

Q.3 (c) . Differentiate between corporation sole and corporation aggregate

- i). A corporation aggregate is "an incorporated group of co-existing persons", and a corporation sole is "an incorporate series of successive persons."
- ii). The former is that which has several members at a time, while the latter is that which has only one member at a time.
- iii). Corporation aggregate are by far the more numerous and important. Examples are a registered company consisting of all the shareholders, and a municipal corporation, consisting of the inhabitants of the borough.
- lii). Corporation sole are found only when the successive holders of same public office are incorporated so as to constitute a single, permanent, and legal person.

Q.3 (d) Discuss various theories of corporate personality.

- i). Fiction theory-According to this theory, the character of a corporate entity is completely imaginary, made with the intent to make legal matters easier to navigate through.
- ii).Concession Theory- The concession theory has been used for political purposes to strengthen the State and to suppress autonomous bodies within it. No such body (i.e. corporation) has any claim to recognition as a 'person'.
- iii)Purpose Theory- It says that only human beings have personality. Juristic persons are no persons at all. They are simply ‘subject less properties’ meant for certain purposes.
- Iv). Realist Theory - According to this theory, a corporation is like a living organism, like a natural human being, which also possess natural rights. A corporation is not the creation of a State or fiction.

