

# Solved 1st month of law

**Law** is a set of rules that govern the behavior of individuals and organizations in a society. It is a system of norms and standards that are enforced by a central authority. Law is essential for maintaining order and justice in a community.

## Kelson's Pure Theory

**Kelson's Pure Theory of Law** is a legal theory that views law as a system of norms. It is based on the idea that law is a hierarchy of norms, with the highest norm being the basic norm. The basic norm is the source of all other norms, and it is the duty of the legal system to enforce the basic norm. Kelson's theory is a form of legal positivism, which holds that law is a social fact and is not dependent on morality or justice.

## John Rawls's Contract Theory of Law

**John Rawls's Contract Theory of Law** is a legal theory that views law as a set of rules that are agreed upon by individuals in a society. It is based on the idea that law is a social contract, and it is the duty of the legal system to enforce the terms of the contract. Rawls's theory is a form of legal positivism, which holds that law is a social fact and is not dependent on morality or justice.

## Reston's Found's Theory of Law

**Reston's Found's Theory of Law** is a legal theory that views law as a set of rules that are based on a set of fundamental principles. It is based on the idea that law is a system of norms, and it is the duty of the legal system to enforce the norms. Reston's theory is a form of legal positivism, which holds that law is a social fact and is not dependent on morality or justice.

## Law's Characteristics

Law has several characteristics, including:
 

- 1. It is a system of norms.
- 2. It is enforced by a central authority.
- 3. It is a social fact.
- 4. It is not dependent on morality or justice.
- 5. It is a hierarchy of norms.
- 6. It is the duty of the legal system to enforce the norms.

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## Law's Sources

Law has several sources, including:
 

- 1. Custom
- 2. Tradition
- 3. Legislation
- 4. Judicial decisions
- 5. Scholarly writings
- 6. International law

## Law's Classification

Law can be classified into several categories, including:
 

- 1. Public law
- 2. Private law
- 3. Criminal law
- 4. Civil law
- 5. Administrative law
- 6. Constitutional law

## Law's Importance

Law is important for several reasons, including:
 

- 1. It maintains order and justice in a community.
- 2. It protects the rights of individuals and organizations.
- 3. It provides a framework for resolving disputes.
- 4. It is essential for the functioning of a society.

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# Salmond's Theory of Law

- Was a law professor in New Zealand, later on Judge of Supreme Court of New Zealand
- Salmond claimed that the purpose of law is the deliverance of Justice to the people
- Differed from Bentham & Austin who saw into Analysis of law without going to the purpose
- Acc to him, law is the body of principles which are recognised and applied by the state in the administration of Justice.
- His other definition → law consists of a set of rules recognised and applied in the name of the state
- Salmond says that human experience had made it clear that some form of compulsion is required to maintain Justice
- If a just Society is to be maintained, it is necessary to add compulsion to as to compel to walk in the desired path.
- Salmond argued that the administration of Justice was the primary task of the state and the laws were made to achieve that objective.

## CRITICISMS

1. Salmond said that justice is end, but in reality there are no. of laws which can be called Justice for ex. Extension of law (Compulsion) by Govt.
2. Justice is not only end of purpose of law, the law of any period serves many ends. These ends → keep changing → in course of time.

# Kelson's Pure Theory

- Austrian Philosopher • Known for his pure theory of law
- Law were imposed as they were drawn upon from various fields like religion, morality to explain legal concepts. Kelson like Austin was individualist
- Acc. to Kelson, law is a primary Norm which stipulates sanction.
- Sanctions to be applied for violation of law.
- Highest possible Norm was termed by Kelson as 'Grundnorm' • Kelson's theory of law is based on 'Pyramidal structure of Hierarchy of Norms' which derive their validity from Basic Norm.
- On his view the basic Norm is the result of Social Economic & Political condition.

For example → In India, a law is valid because it derives its authority from being duly passed by the Parliament and receiving the assent of the President. The Parliament & President derive their authority from a Norm i.e. Constitution. As to the question from where does the Constitution derive its power there is No Answer. Hence Govt. is the Grundnorm.

## CRITICISMS

1. It is very difficult to trace groundnorm in every country. There is no such a yardstick to measure effectiveness of the groundnorm.
2. Did not give the impetus for which the effectiveness should hold for the requirement of validity to be satisfied.
3. Kelson's theory seems to be pure in manner as analysis the groundnorm from one will have to draw subjects other than law, like sociology, morality etc.
4. Operational law does not sit well with Kelson's theory.

# Jeremy Bentham's Theory of Law

- British • He claimed that Nature has placed man under command of a Sovereign - Pain & Pleasure • The function of law should be to bring about the maximum happiness of each will result in the happiness of All
- Hence the Sovereign power of the making the laws should be vested not to guarantee the rights derived by the individuals.

Bentham said that law must be considered in 8 different respects

1. Source → Law originates
2. Subjects → To which the law binds the state
3. Objects → Goods of given law
4. Extent → territorial boundary upto which a law shall apply
5. Effect → 2 Aspects → Descriptive - of law how it is
6. Force → Mandatory Pathway the law follows through which judges set of subsidiary laws addressed to the Judge through which judges
7. Remedial Appellate →
8. Extension → A law is an expression of Sovereign will

## A FORSEE

## CRITICISMS

1. It does not take proper account of laws conferring power like the power to make contracts
2. Bentham did not give fair treatment to lawyers as a source of law.
3. Bentham did not allow Judges to make laws.
4. He did not take into account the fact that the happiness of 1 segment in a society results in overall happiness.

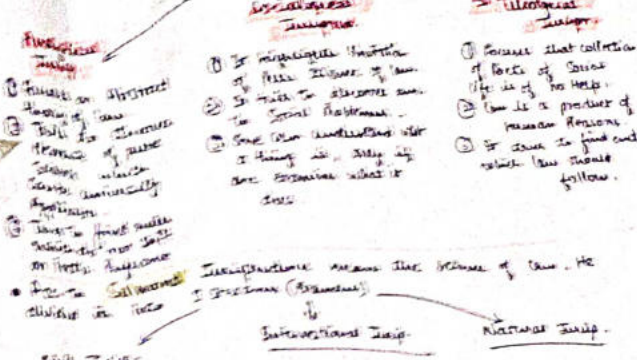
## Criticism of Roscoe Pound's theory

1. Pound did not take into account the fact that the happiness of 1 segment in a society results in overall happiness.
2. Pound's distinction between political & social int. are doubtful and even distinction b/w indiv & social int. are of very little significance.
3. Recognition of int. and the matter of policy. To say pressure has list of interest is limited assistance provide help for given dispute.

# Law

1. It is derived from the social facts which means that law is not created by the state but it is a product of social facts.
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## Historical Methods of Jurisprudence



- In the English Jurisprudence, the concept of legal system is derived from the study of law in the legal system.
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# John Austin's Command Theory of Law

- Law is a command of the Sovereign
- Sovereign is a person or body of persons who has the power to issue commands which are binding on the subjects.
- Law is a command which imposes duty and for failure to fulfil it there is a sanction (punishment).
- Law has 3 features:
  - 1. It is a command.
  - 2. It is given by Sovereign Authority.
  - 3. It is a sanction behind it.

- **Command** → an expression of will or desire of an intelligent person, clothed with authority, which is enforced from any act. Requires 2 Rules → Common Law & Customary Law.
- **Sovereign** → Politically Superior, Sovereign = source of all law.
- **Sanction** → evil consequence that follows on violation of command.

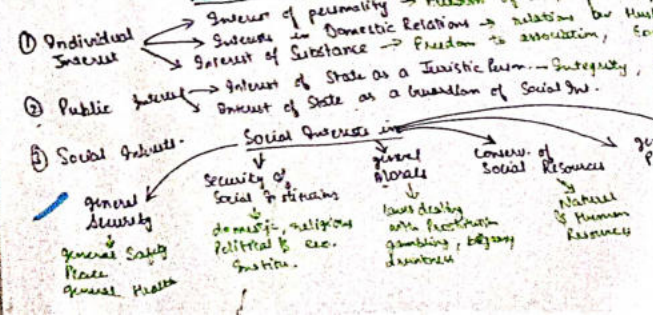
## CRITICISMS

1. Each member of the community does not have to obey anyone but in most cases they do.
2. Acc to Austin Sovereign does not have to obey anyone but in most cases they do.
3. Austin's theory is too narrow as it only deals with the law as it is, not as it should be.

# Roscoe Pound's Theory of Interests

- American Legal Scholar • Draw similarity b/w the task of a lawyer & the task of a social engineer.
- Goal of his theory = to build a society of maximum well-being with the minimum sacrifice of individual interests.
- Such a Society will be 'Egalitarian Society'.
- **All to him for balancing the competing interests.**
- 1. Finding Interest & Classifying them.
- 2. Selection of interests which should be legally recognized.
- 3. Fixation of limits of each interest.
- 4. Check to see if the law is doing its duty to secure the balance of interests.
- 5. Evolution of the principles of valuation of interests.

## Roscoe Pound's Classification of Interests

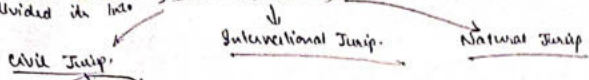


**Law and Jurisprudence**  
 Law is derived from the word juris which means study of science of law.  
 Jurisprudence is the study of science of law.  
 It is not about any particular statute or rule of law but of law in general.  
 Different Jurists have used the term in different ways. However, Jurisprudence is defined, it remains a study relating to law.

**Various Schools of Jurisprudence**

- Analytical Jurisprudence**
  - Focuses on Abstract theory of law.
  - Thinks in terms of elements of pure science which can be universally applicable.
  - Tries to find rules which do not shift on India. Reference Acc. to Salmond divided into two.
- Sociological Jurisprudence**
  - It highlights limitation of pure science of law.
  - It tries to discover ans. in social behaviour.
  - One can understand what a thing is, only if one examines what it does.
- Historical Jurisprudence**
  - Focuses on the collection of facts of social life of a people.
  - Law is a product of human actions.
  - It aims to find out which law should follow.

Jurisprudence means the science of law. He divided it into 3 streams (branches)



As per English Jurist Bentham is used jurisprudence is used in 2 sense  
 one as a law referring to the substance of interpretation.  
 As per Prof. G.D. Paton, Jurisprudence is founded on the attempt, not to find authorities b/w law, its concepts & life of society.

**John Austin's Command Theory of Law**

- First Chairman of Jurisprudence at University of London
- Known for command theory of law.
- Acc to him, law is the command of sovereign that is backed (followed) by sanction.
- Law is a command which imposes duty and the failure to fulfill the duty is met with sanction (punishment).
- Law has three features:
  - It is a command given by sovereign authority.
  - It is given by sovereign behind it.
  - It has a sanction behind it.
- **Command** → an expression of wish or desire of an intelligent person, directing other person to do or to forbear from any act. Requires 2 Parties → Commanders & Commanded.
- **Sovereign** → Politically Superior, sovereign = source of all law.
- **Sanction** → evil consequence that follows on violation of command.

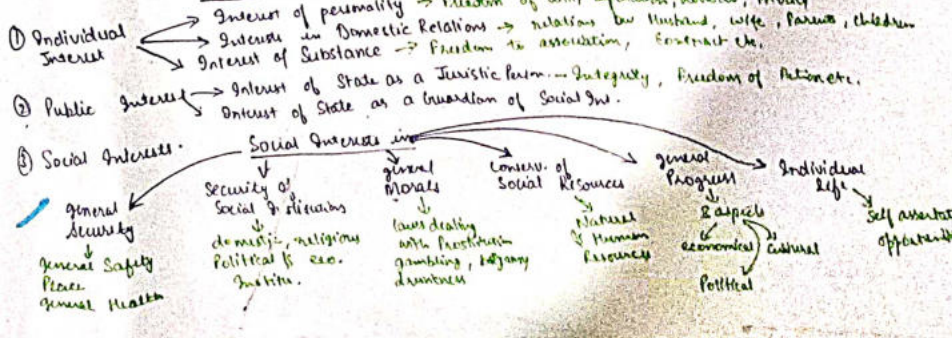
**CRITICISMS**

- 1) Much welfare laws like Compulsory Education Act etc. are not command but have to be followed by law.
- 2) Acc to Austin sovereign does not have to obey anyone but in modern states their powers are limited by constitution.
- 3) Austin's theory judges the law as it is, but in reality judges the law as it should be.

**Roscoe Pound's Theory of Interests**

- American legal scholar.
- Drew similarity b/w the task of a lawyer and an engineer.
- Goal of his theory = to build such structure of society where the satisfaction of wants of maximum was achieved with the minimum wastage.
- Such a society will be 'Efficient Society'.
- Acc. to him, for determining scope & subject matter, the following 5 things need to be done:
  - 1) Finding interest which should be legally recognized.
  - 2) Selection of kinds of conflicting interest.
  - 3) Fixation of limits of laws b/w interests to secure the purpose.
  - 4) Check whether the principles of valuation of interests.
  - 5) Evolution of the principles of valuation of interests.

**Roscoe Pound's Classification of Interests**



- 1) It means 'order' in the decisions of do not possible things which are established.
- 2) This doctrine brings uniformity & consistency in law.
- 3) It says that a principle of law which has been settled by series of decisions generally in binding on courts & must be followed in similar cases.
- 4) The like case should be decided alike.
- 5) However, this doctrine is not universally applicable.

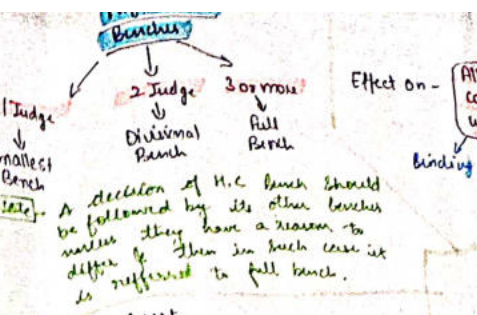
**Ratio Decidendi**

- 1) It is the proposition of law which is necessary for the decision of a case to be extracted.
- 2) The underlying principle (reason) of a judicial decision, which is only authoritative, is called Ratio Decidendi.
- 3) The doctrine has binding on parties.
- 4) It also has a force of law.
- 5) In other words, it is a legal principle deduced by the way of abstraction of material facts constituting material facts.

**Obiter Dicta**

- 1) It is a latin expression which means 'said by the way'.
- 2) These are statements of law made by the judge while delivering a judgment which were not strictly necessary to be made.
- 3) These are persuasive precedents only.
- 4) The judges are not bound to follow them. Although they can take advantage of them.
- 5) Sometimes it is very difficult to see whether expression is Ratio Decidendi or Obiter Dicta.

It is a field of intellectual enterprise within Jurisprudence that involves in the development & analysis of foundation of law.



- Supreme Court**
- 1) It is the highest court.
  - 2) Its decisions are binding on all courts and tribunals.
  - 3) Article 143 states that SC's decisions shall also be binding on all courts within India.
  - 4) SC is not bound by decisions of High Court of Federal Courts.



**NATURAL SCHOOL**  
 Famous Jurist - Salmond  
 Law is the body of principles recognized & applied by the state in the adminis.

**Positivist Definition of Law**  
 John Austin & Kelson  
 Austin - Law is command of sovereign.  
 3 Elements of this law: Command, Duty, Sanction.

- 2 main factors of this definition -
- 1) To understand law, one should know its purpose.
  - 2) To Ascertain true nature of law, one should go to law not to legislature.

**Main characteristics that Law must incorporate**

- 1) Law pre-supposes a state (pre condition / STD)
- 2) State makes or sanctions rules which are called law.
- 3) For Rules to be effective, there are some sanctions behind them.
- 4) Law is made to serve some purpose.

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to mean knowledge  
of science of law.  
The statute or rule of law but  
term in different ways.  
Evidence is defined, it remains

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**Theory of Law**

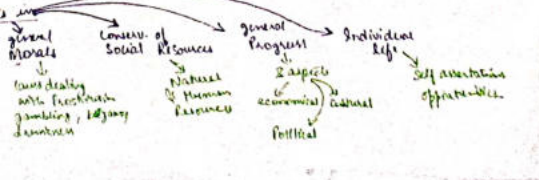
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Law is a positivistic  
and of sovereignty that is followed by sanction  
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out. Requires 2 things → Command  
Sovereign = source of all law  
follows on violation of command.

have to obey anyone but in modern states  
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Similarly like the task of a lawyer and an engineer  
Goal of this theory = to build such structure of society where the  
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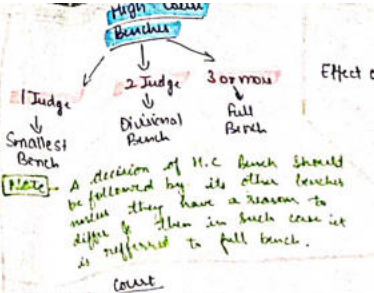
**Justification of Interests**  
Freedom of will, reputation, honour, privacy  
relatives by husband, wife, parents, children  
Freedom to association, Exercise etc.  
as a Juristic form → Integrity, Freedom of Action etc.  
on a foundation of Social Justice.



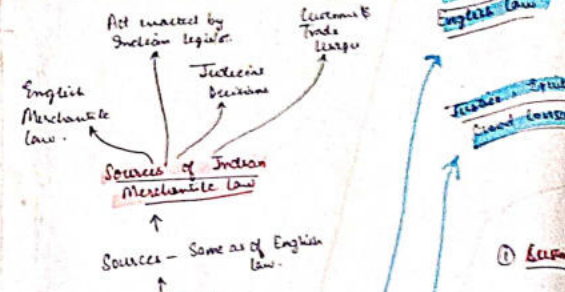
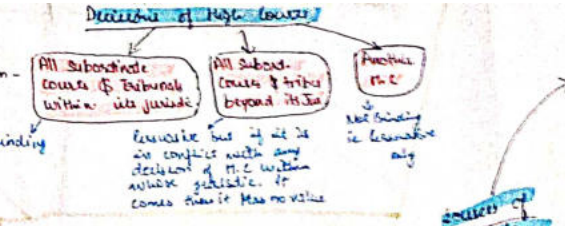
**Doctrine of stare decisis**  
(Principle of Precedent)  
It means 'adhere to the decision  
if do not unsettled things which  
are established.  
This doctrine brings certainty &  
uniformity in law.  
It says that a principle of law  
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**Supreme Court**  
It is the highest court  
Its decisions are binding on all courts  
It has original jurisdiction  
It states that SC's decisions shall  
be binding upon all courts within India  
SC's obiter dicta shall also be binding  
SC is not bound by decisions of High  
Courts of Federal Courts.



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**Positivistic Definition of Law**  
John Austin & Kellin  
Austin -  
Law is command of  
Sovereign.  
3 Elements of this law  
Command Duty Sanction  
Kellin -  
gave a pure theory of law  
Law is a Normative Science  
Law does not attempt to  
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**Main characteristics that law must incorporate**  
1) Law pre-supposes a state  
(for coercion, etc.)  
2) State makes some rules  
which are called law.  
3) For rules to be effective, there  
are some sanctions behind them.  
4) Law are made to serve some  
purpose.

**Historical Def. of L**  
Sourin  
1) Law is a matter  
of Unconscious &  
Organic growth.  
2) Law is found &  
not made.  
3) It is not  
Universal.  
4) Customs not only  
precedes legislation  
but are superior to  
it.

**Sociological Def. of L**  
Roscoe Pound  
1) Law is an instrument  
of social engineering.  
2) Law is a social  
institution satisfying  
social needs.  
3) It orders human  
conduct.

**Rational Def. of L**  
Hobbes  
Law is a statement  
of circumstances in  
which public force  
will be brought  
to bear upon  
through laws.

**How laws are made effective**  
By punishing  
disobedience  
Specific  
Performance

**Significance of Law**  
1) Law is not static & keeps changing  
as per customs.  
2) It provides hope to security for future  
It provides Socio-economic justice  
3) Removes existing imbalances in society  
4) It is a vehicle of Social Change

**By act**  
State  
Legis  
Action

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