

## \* Chapter 1 :- Sources of Law. \*

- Law is a command of sovereign, which regulates human behaviour described by various jurists.

• Significance :- not

- Law is  $\downarrow$  static. It is Dynamic. Law changes as per requirement of society.

## \* Jurisprudence and legal theory.

- The word jurisprudence is derived from the word 'juris' means law and 'prudence' which means knowledge. So, jurisprudence means knowledge of law.

- The meaning of jurisprudence has changed over a period of time as the boundaries of discipline are not rigid.

- It has two fold aspect

abstract  
body of rules

Social machinery  
for securing order.

## 1] Analytical Jurisprudence :-

- Analytical jurisprudence focuses on abstract theory of law which is based on pure science.

- It is based on those foundation of objective factors which are universally true.

- Law should not be shifting sand of individual preference, it should be followed and accepted by all.

## 2] Sociological Jurisprudence :-

- Sociological jurisprudence says that law made to solve social problems, it is answer to social problems.

- If someone wants to understand the law it is necessary to understand social problems first.

## 3] Teleological Jurisprudence

- The teleological jurisprudence highlights that law is made for human resources & it is related to human reasons.

- It is intimately related to notion of purpose.

- There is supreme end which law follows.

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## \* Jeremy Bentham :-

- He placed man under command of two sovereign i.e pain & pleasure.
- He used / followed the principal of benevolence.
- His concept states that, 'happiness of each will result into happiness of all'.
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- Criticism. — i] He doesnot specified proper meaning of law.
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- Justice is primary source of law.
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\* Prof. HLA Hart :-

Positivism : as per Prof. HLA Hart

- Prof. HLA Hart was british legal philosopher. He listed many things as meanings related to 'positivism'. Those meanings are as follows :-

- Laws are basically the commands

- The analysis of legal concept is

- worth living.

- different from sociological and historical enquiries into law,

- It is different from critical evaluation.

- Decisions can be removed logically from predetermined rules without option to social aims, policy or morality.

- Moral judgements cannot be established by rational agrument, evidence or proof.

- Law it is laid down should be kept away from the law that ought to be.

\* Hans Kelsen :- He is positivist

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- He considered sanction 'norm' as an essential element of law.

- According to Kelsen, 'Law is a primary norm which stipulates sanction.'

- He focused on what was the law instead of what it should be.

- He explained law as 'normative science'. His theory is pyramidal structure of norms.

- Norms derive from basic norm such norms called as grund norms.

• Criticism :- • It is difficult to know grundnorm.

• He primarily focused on International law not to municipal laws.

## \* School of law :-

### I Natural school of law :-

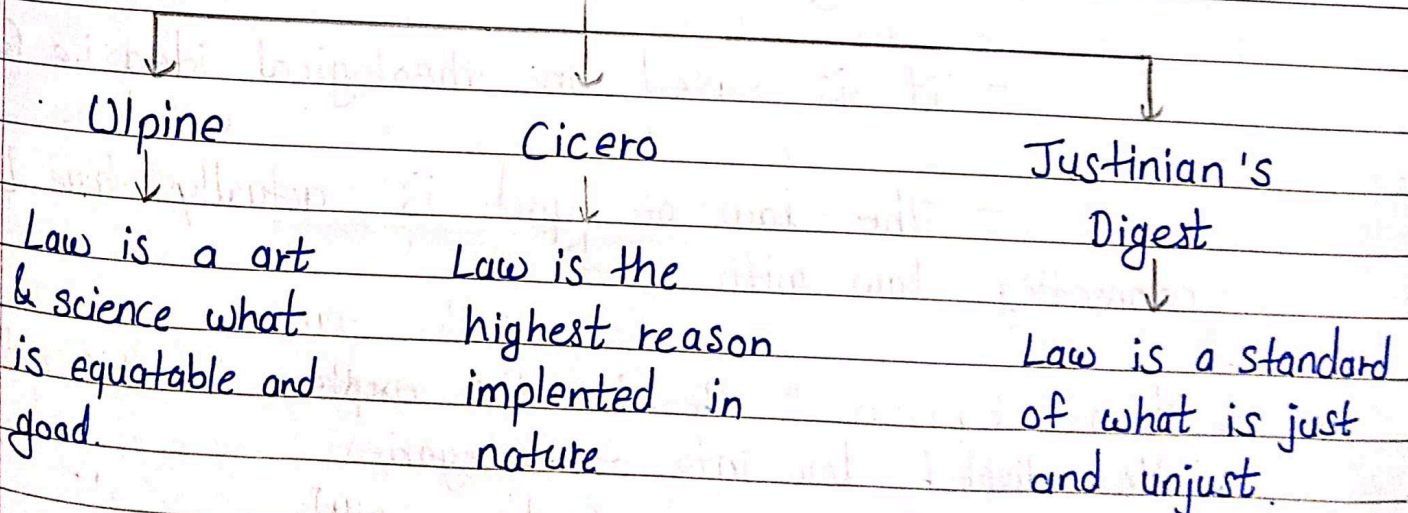
"Natural school of law says that certain rights & duties exist due to human nature and it can be understood through human reason. This school focuses on morality and justice."

### • Ancient theory :-

- There are two types of philosophers, Under this school.

- Roman and ancient jurists.

### Roman philosophers



## Greek philosophers

Heraclitus



- 1st Greek philosopher.
- He said there are 3 main features of law
  - destiny, reason and order, which are interconnected.

Plato



- His theory is characterized by two aspects - wisdom and reason.

### • Medieval Theory :-

- It is based on theological idea i.e. God.
- The law of god is actually true Dharma connecting law with god.

Thomas Aquinas = He is the expert in this theory. He divided law into 4 categories.

- a) Law of God
- b) Natural law
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## • Renaissance Theory :-

- Reason is the main foundation of this theory.

- It has two different features i.e. more secular, political founded due to human reasons.

- It promotes natural rights of a man and the state.

Major proponents =

1) Hugo grotius :- It is a duty of sovereign to safeguard of citizens.

2) Immanuel kant :- Man is guided by his own conscience. Natural law is based on right reasons.

## • Modern Theory :-

- This theory rejects the old theories. This theory is a ~~kind~~ revival of some other theories and revival of Natural law.

## \* Judicial Precedents :-

1) Declaratory and Original precedents

- A declaratory precedent is the one which is merely the application of an already existing

rule of law. In case of advance precedents are more numerous. It is a law for future because it is now applied.

### 2) Persuasive precedents

- A persuasive precedent is one which the judge are not obligated to follow but they will take into consideration. In India, the decision of one high court are only persuasive precedent in other high court.

### 3) Absolutely Authoritative Precedents :-

- An absolutely authoritative precedent is one which judges must follow whether they approve of it or not. An authoritative precedent is a legal source of law.

### 4) Conditionally Authoritative Precedent :-

- A conditionally authoritative precedent is one which though ordinarily binding on court before which it is cited, is liable to be disregarded in some circumstances.

### \* Ethical School

- Ethics means moral values.

- It states that law and ethical values are not related.

- It also says that, society must have ethical value and ethical purpose.

### \* Sociological School :-

- This school states that society and law are inter-related.

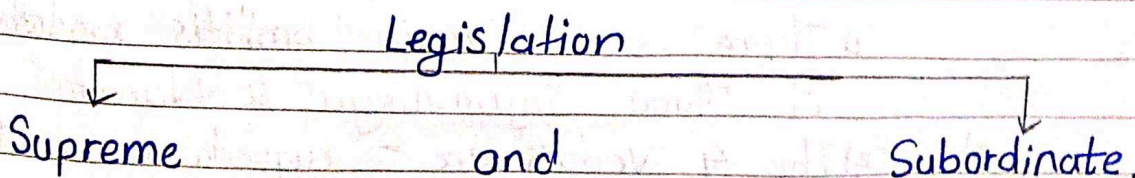
### \* Realist School of law

According to Holmes :- Law is statement of circumstances in which public force will be brought to bear upon through courts.

### \* Statutes or Legislation.

- Legislation is source of law which consists declaration of legal rules by authority.

- It is also called as 'Juris scriptum' it means written law.



## • Supreme legislation

- Supreme legislation have its power directly from constitution.

- It cannot be revoked, abolished or controlled by other legislative authority.

## • Subordinate legislation

- Subordinate legislation have its power by supreme authority of legislation.

- It has its continue existence.

- The parliament of India have power over the powers of supreme legislation.

## \* Personal law

- In lots of cases the courts are required to apply the personal laws of party.

- In case of Hindu there personal law found in :- "Shruti" which contains 4 vedas.

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- The personal law of Mohammedas found in :- Hadis, Ijmas, The holy karan. Mohammedas are governed by their personal law.

### \* Doctrine of Stare Decisis :-

- Adhere to the decision and do not unsettle things which are established.

- This doctrine bring certainty, and uniformity in law.

- This doctrine means like cases should be treated alike.

- The rule is based on public policy and expediency.

### \* Obiter Dicta.

- Obiter Dicta means 'said by the way'.

- Judge while giving judgement says many things which are not strictly necessary for decision, judges are not bound ~~not~~ to follow them although they can take advantage out of it.

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- When we say judicial is binding as a precedent what we means is rule formulated in decision must be applied when similar facts arise in future.

- Ratio decidendi means reason for deciding all material facts of elements of decision is ratio decidendi and immaterial elements are obiter dicta.

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## \* Secondary source of law.

### • Justice, Equality and Good Conscience.

- In absence of any law, custom or personal law case should be decided on basis of justice, equality and good conscience.

- Justice, equity and good conscience originated from british administration in India.

- British government directed that when that law was silent case should be decided on the basis of justice, equality and good conscience.

- Supreme court has also established the same rule.

## \* Sources of English law :-

### i] Common law :-

- Common law is made by judgement of judges, on decision of certain principles.
- These principles have been built up over many years as to form complete statement of law.

### ii] Law Merchant :-

- It is most important source of merchantile law.
- Law merchant means those customs which are binding on traders in their dealings with each other.
- Custom has to be proved by the party claiming it.

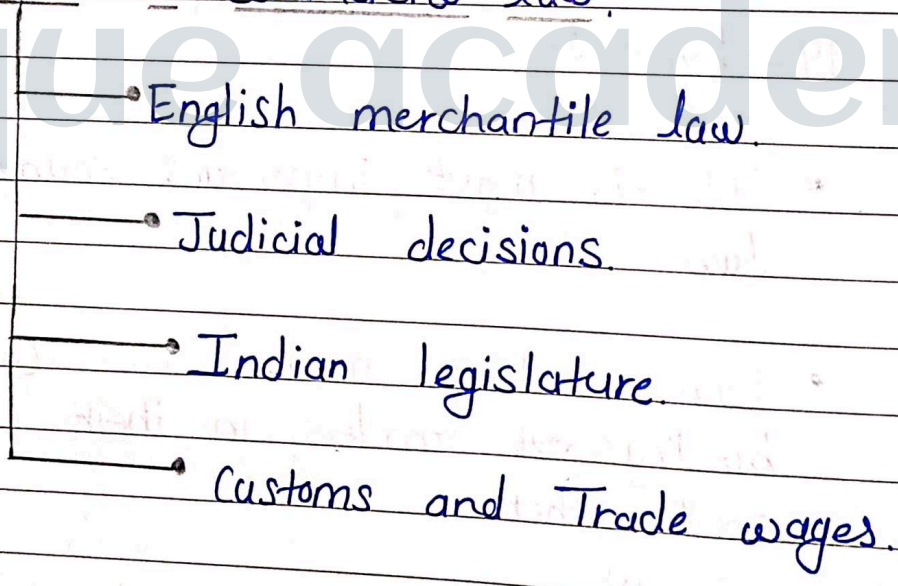
### iii] Equality :-

- It is a body of rules.
- It is primary source of which was neither custom nor written law.

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- Statue law is the portion of which is derived from legislation or enactment of parliament or legislative bodies.
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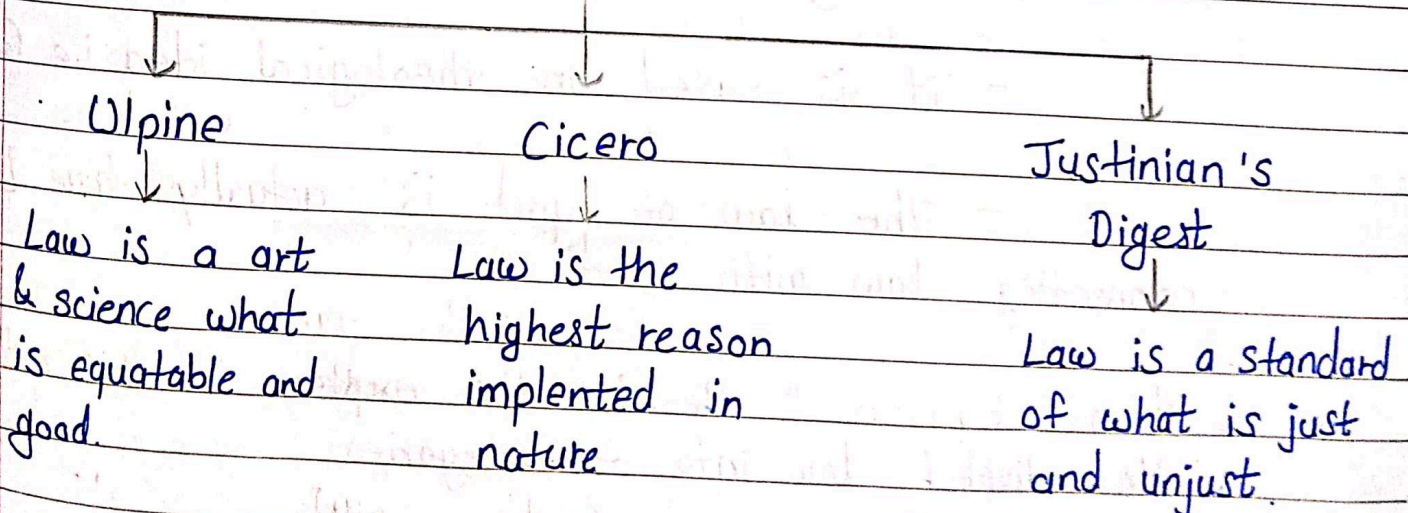
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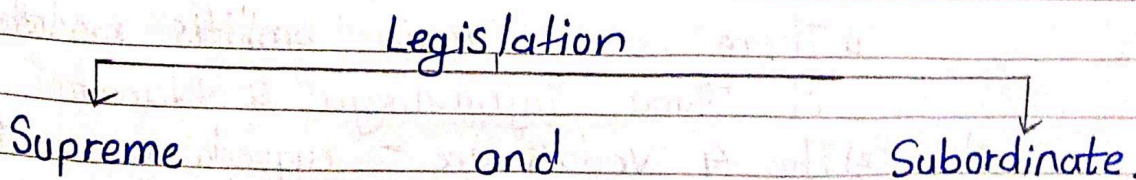
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