



CS EXECUTIVE CHART BOOK QUICK REVISION GUIDE

JURISPRUDENCE, INTERPRETATION AND GENERAL LAWS



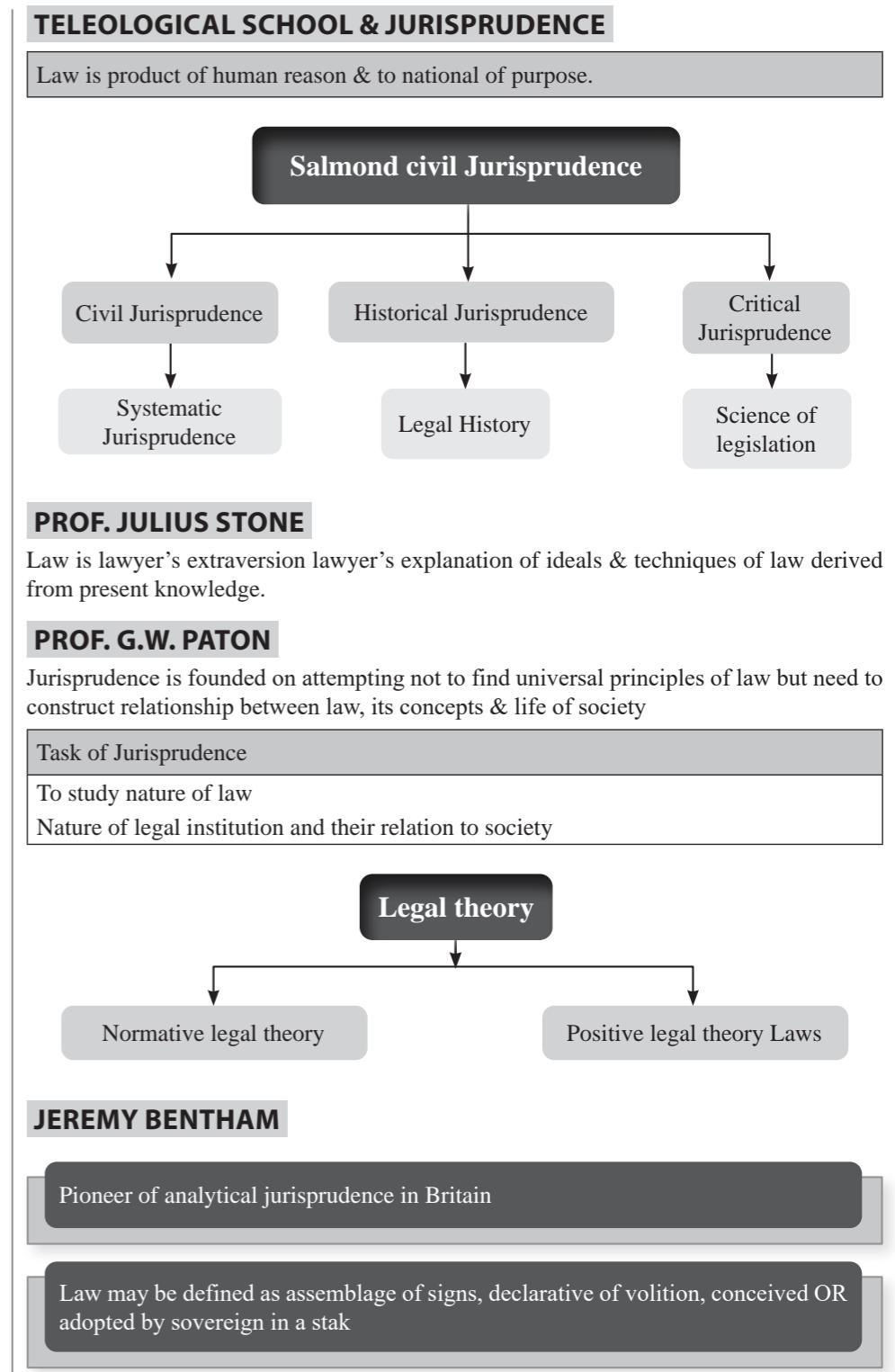
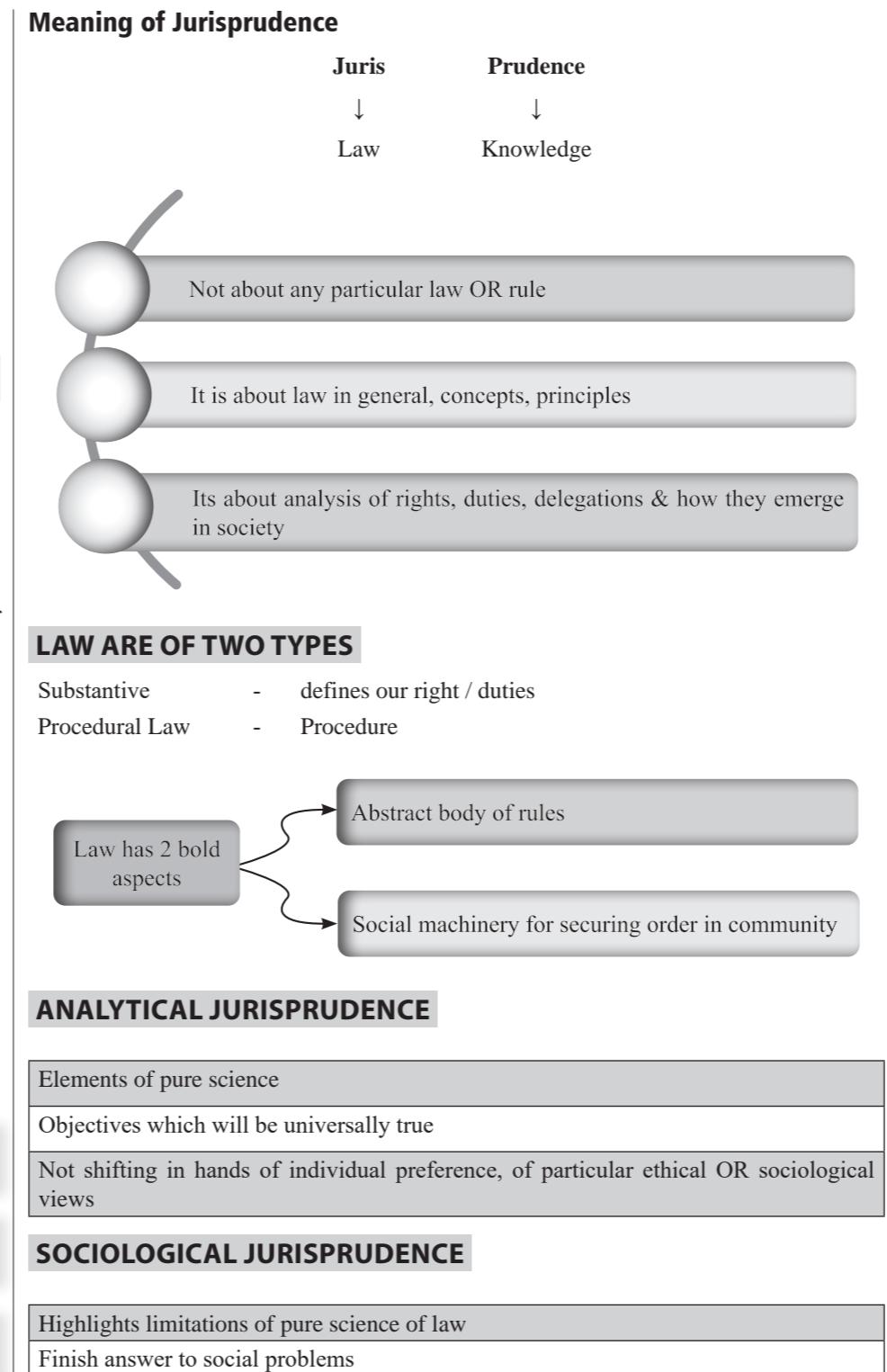
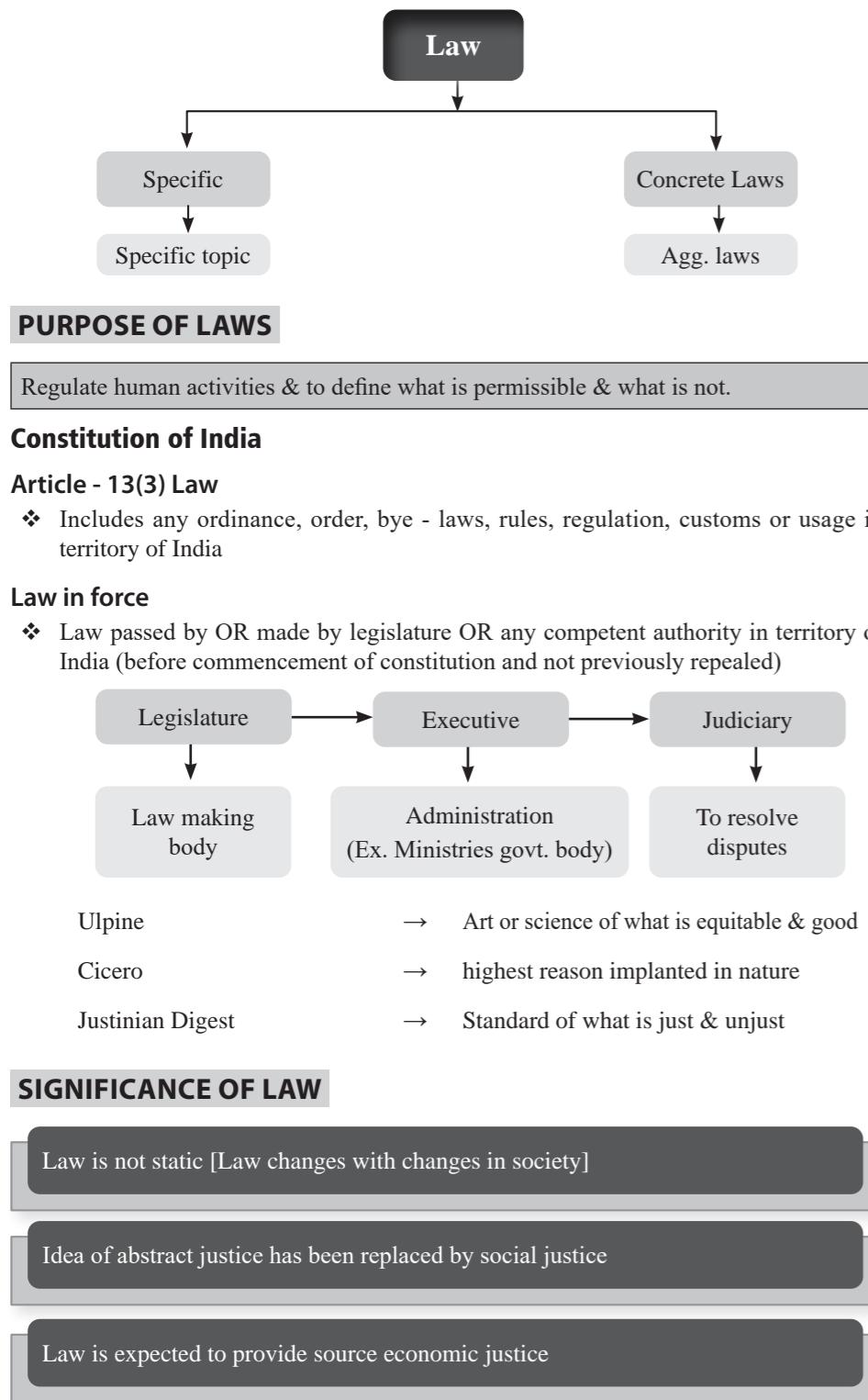
Module 1

- ☞ **Summarised Tabular Chart** Format for revising the subject matter in an easy-to-learn format
- ☞ **Point-wise Summaries** of each chapter are provided in a nutshell
- ☞ **Full-coverage of the New Syllabus** for CS-Executive Dec 2024 exams

Contents

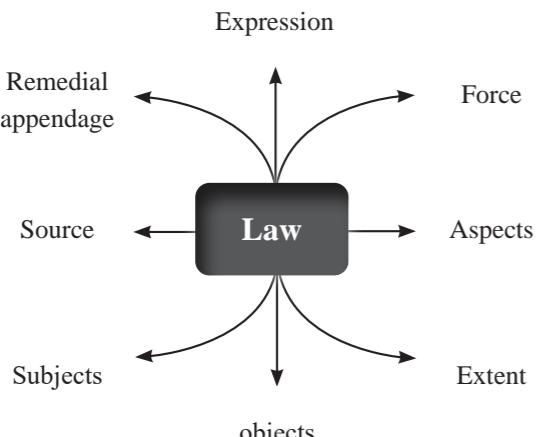
1. Sources of Law	1-5
2. The Constitution of India.....	6-12
3. Interpretation of Statutes	13-15
4. Administrative Laws.....	16-18
5. Law of Torts.....	19-20
6. Laws Relating to Civil Procedure.....	21-27
7. Laws Relating to Crime and its Procedure	28-35
8. Law Relating to Evidence.....	36-40
9. Laws Relating to Specific Relief	41-44
10. Law Relating to Limitation.....	45-51
11. Law Relating to Arbitration, Mediation and Conciliation.....	52-60
12. Indian Stamp Law.....	61-70
13. Law Relating to Registration of Documents	71-79
14. Right to Information Law	80-83
15. Law Relating to Information Technology.....	84-87
16. Contract Law	88-98
17. Law Relating to Negotiable Instruments	99-106
18. Law Relating to Sale of Goods.....	107-112

SOURCES OF LAW



He commanded that nature has placed man under command of two sovereigns pain & pleasure

Function of law is to bring max happiness to each individual resulting in happiness of all



COMPLETE LAW SHOULD HAVE FEARNESS OF INTEGRITY + UNITY

Law is complete in expression connection & design

Criticism

- (i) Straight-Jacketing of law into an imperative theory (all laws are either command OR permission)
- (ii) He did not give fair treatment to customs as source of law
- (iii) Did not allow judge made law
- (iv) Theory did not provide subjective criteria of pain & pleasure
- (v) It is not always true that an increase in happiness of a certain segment of society will lead.

John Austin

First occupant of chair of Jurisprudence at university of London

Command theory of law

He was a positivist

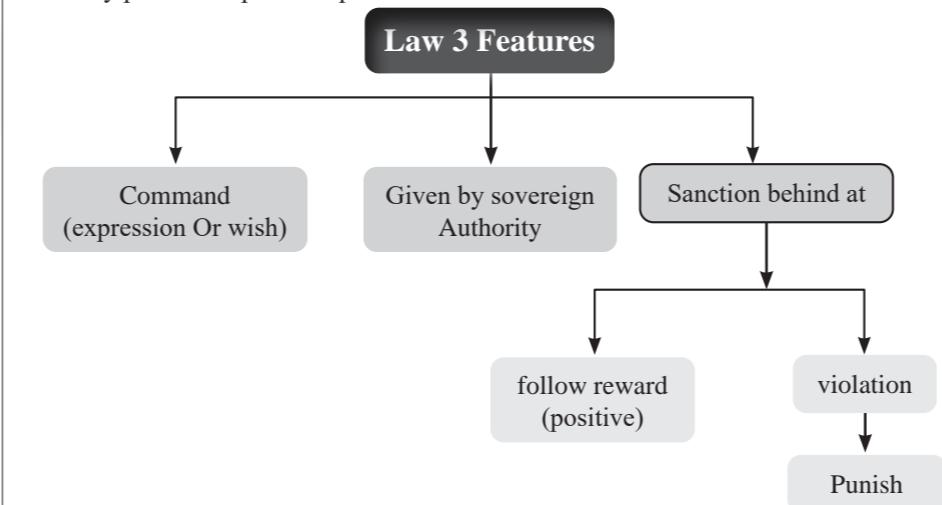
Concerned himself on what is the law was instead of going into justice & fairness

"Law properly so called"

General Command

"Law un-properly so called"

Given by political superior to political inferior

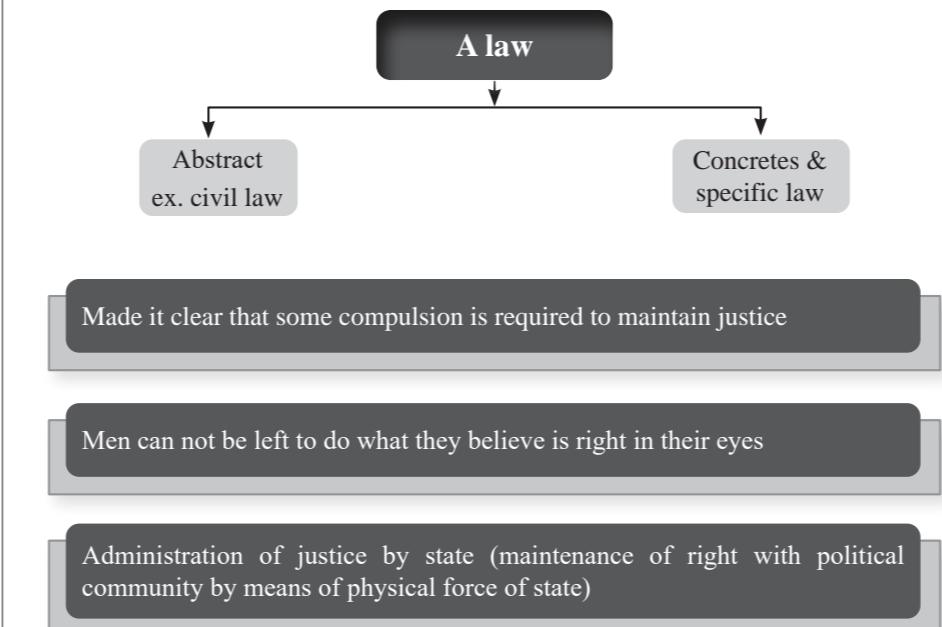


Criticism

- ❖ State pass number of laws that do not command people but gives them rights & benefits
- ❖ Sovereign does not have to obey anyone
- ❖ Does not provide for judge made laws
- ❖ Presence of a sovereign is a prerequisite for proposition (law), But it failed to recognize international laws.

John William Salmond

- ❖ Law professor
- ❖ Judge of supreme court of New Zealand



Law

Primary Task

Administration of justice

Secondary Task

Laws

Laws are pre-established & authoritative rules are applied in administration of justice. Administration of justice is possible without laws but it is not desirable.

CRITICISM

- ❖ Justice is the end & law is medium to realize it.
- ❖ Pursuit of justice is not the only purpose of law.
- ❖ Justice is a universal concept
- ❖ Purpose of law → administration of justice to study first principles of law which should not be constrained by rational boundaries.

ROSCOE POUND

- ❖ American legal scholar
- ❖ Law is made by Engineer and lawyer = social engineering
- ❖ Goal → build a structure of society where max. satisfaction of wants can be achieved with minimum of function & waste

Legal order → Successful

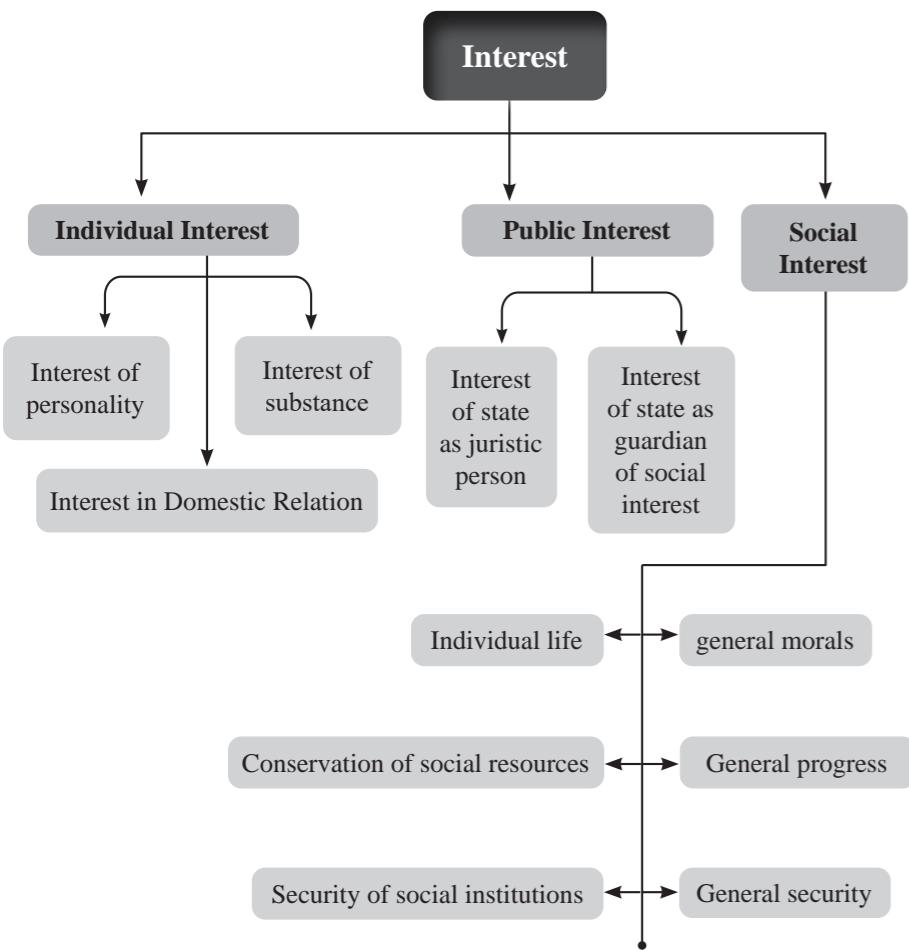
Recognition of certain interest

Defining certain limits

Securing these int. written limits defined

To Determine Scope & Subject Matter of Legal System

- (1) Preparation of interest of inventory + their classification
- (2) Selection of int. which are legally
- (3) Demarcation of limit of searing int.
- (4) Consideration of means (When to acknowledge OR limit)
- (5) Evaluation of principles of valuation of interest



CRITICISM

- ❖ Pre-existing law & legal system should have a balance (due to a lot of interest creation)
- ❖ Does not provide any criteria for evaluation of interest
- ❖ Judges translate the activity in terms of interest, (more importance to judiciary, not legislature)
- ❖ Distinctions are doubtful
- ❖ Recognition of new interests is a matter of policy.

PROF. HLA HART

British legal philosophers

Law are

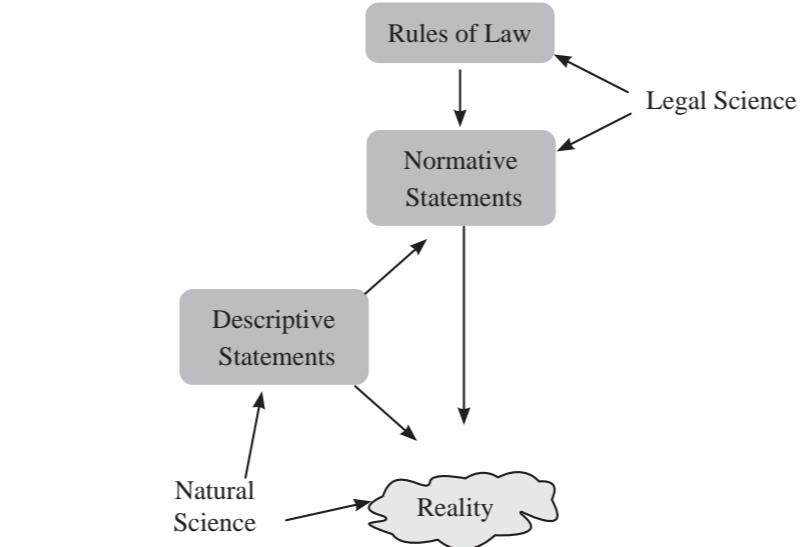
Analysis of Legal Concepts

- Worth pursuing
- Distinct from inquires
- Distinct from critical evaluation

DECISIONS CAN BE DEDUCED LOGICALLY FROM PRE-DELOMINED RULES

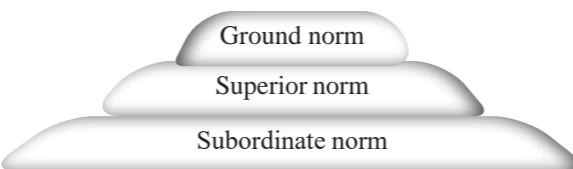
Moral judgments can not be established or defended by rational judgment, evidence or proof.
Law as it is lord down should be kept separate from law ought to be

Hans Kelsen



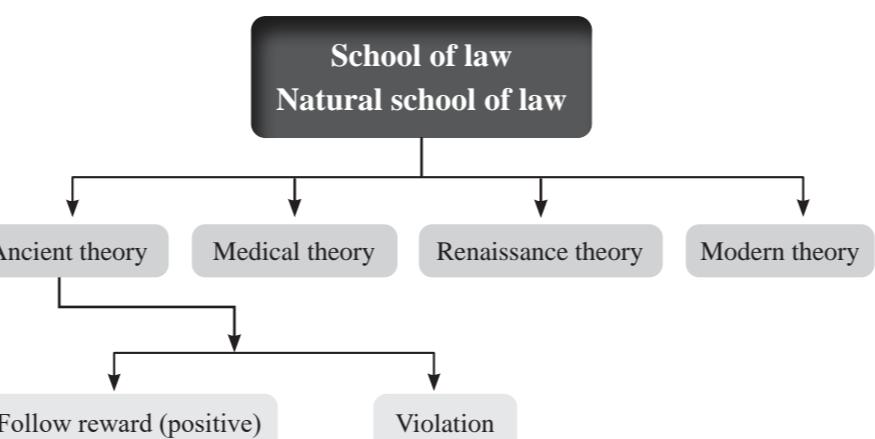
LAW IS A PRELIMINARY NORM WHICH STIPULATES ACTION

(Sanction) rules forbidding certain behavior



Criticism

- ❖ Difficult to trace ground norm in every legal system
- ❖ Does not provide time frame for effectiveness OR validity
- ❖ Ceases to be "pure" the moment one tries to analyse groundnorm
- ❖ Does not sit well with international laws.

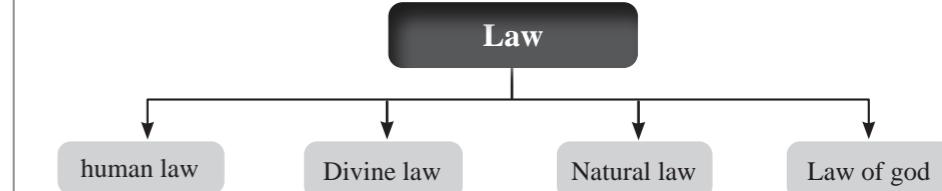


(1) Ancient Theory

- Herocles** - Greek philosopher 3 main features of law
 - Destiny
 - Reason
 - Order
- Socrates** - Human sight → helps a man distinguish between good OR bad
- Plato** - 2 man aspects - **wisdom and reason**
- Aristotle** - Reason unaffected by desires

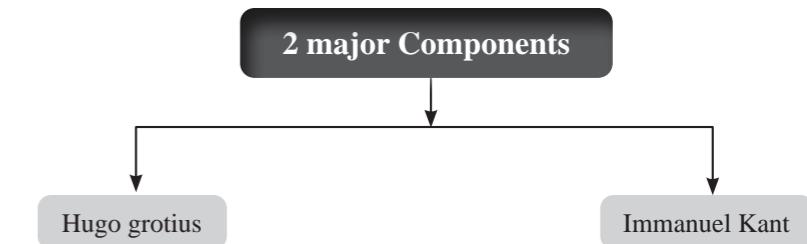
(2) Medieval Theory

- Theological idea of god
- Law is actually true
- Dharma connecting with god
- "Law is part of dharma"



(3) Renaissance Theory

- Marked by rationalism
- Reason is main foundation
- More secure, political was founded on human reasons
- Advocates natural rights of man & the state



(4) Modern Theory

- Rejects older theories & conceptions
- Revival of natural law
- Reaction against positive & historical approaches

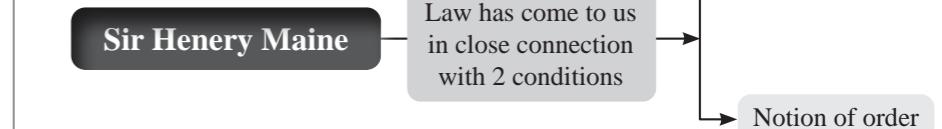
Analytical School of law

- English jurist → John Austin
- Law is set of rules by man as politically superior or sovereign to men as political Subject
- Law is command of sovereign
- Includes Hans Kelsen theory

Historical school of law

- Origin, formation & development of law is outcome of historical & evaluation forces
- Originates from a long drawn practice of customs, ongoing conventions, social habits, traditions etc.

Sir Henery Maine



Von Savigny's theory of law

- ❖ Law is matter of unconscious & organic growth (law is found & not made)
- ❖ Law is not universal in nature (varies with people & age)
- ❖ Customs not only precedes legislature but it is superior to it (Conform to popular consciousness)
- ❖ Law has its source from common consciousness of people
- ❖ Legislation is last stage of law making (lawyer & jurist are more important)

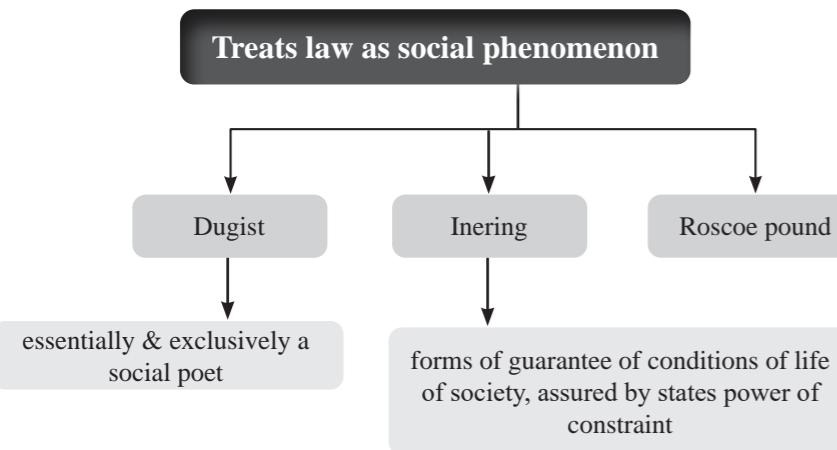
Philosophical / Ethical school of law

- ❖ Law must have an element of ethical value & purpose
- ❖ Law as a means to achieve its end which individuals can harmonize with general will.

Hugo Gratius – Rules of human conduct emerge from right reason therefore they receive public support of community

Hegel – purpose of law is to reconcile the conflicting egos in society (to achieve human perfection + individual liberty)

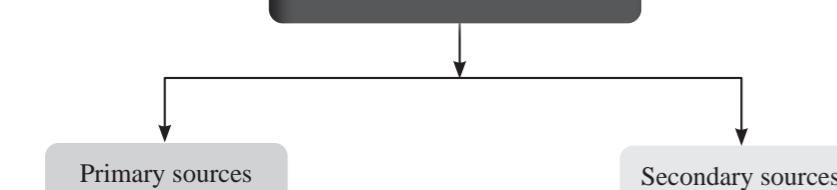
Sociological school of law



Realistic School of Law

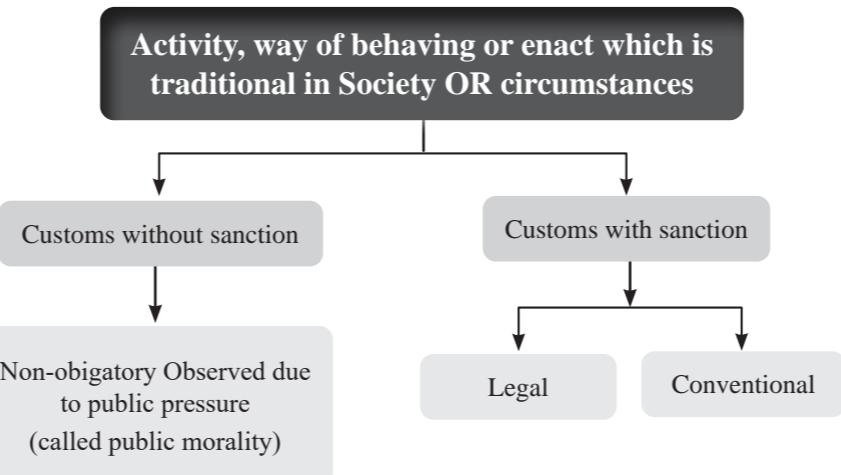
- ❖ Law is a statement of circumstances in which a public force will be brought to bear upon courts.
- ❖ following are the main characteristics of law and a definition to become universal one, must incorporate all these elements:
 - ❖ – Law presupposes a State
 - ❖ – The State makes or authorizes to make, or recognizes or sanctions rules which are called law
 - ❖ – For the rules to be effective, there are sanctions behind them
 - ❖ – These rules (called laws) are made to serve some purpose. The purpose may be a social purpose, or it may be simply to serve some personal ends of a despot.

Sources of Indian Law



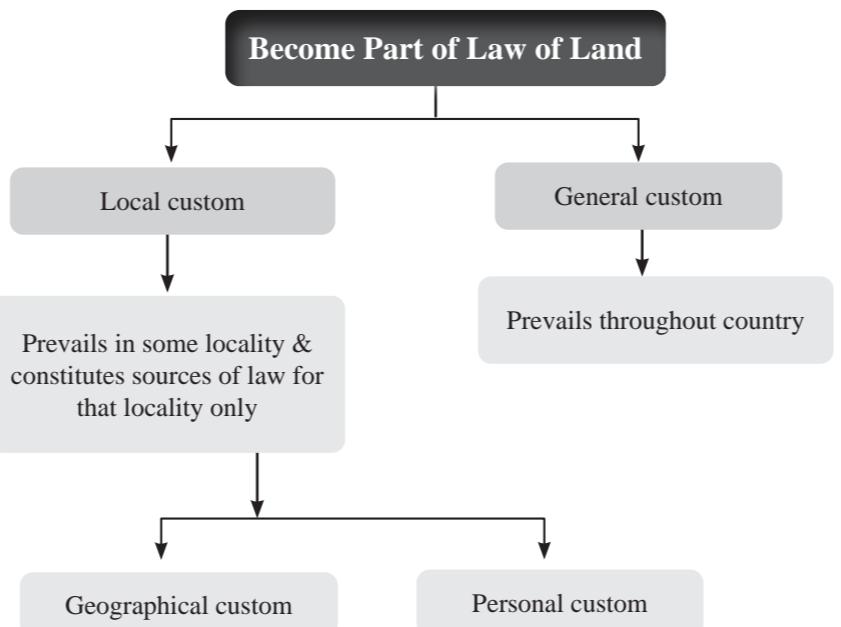
- ❖ Customs / customary law
- ❖ Judicial Decision / precedents
- ❖ Statutes OR legislation
- ❖ Personal law

(1) CUSTOMS OR CUSTOMARY LAW



(I) LEGAL CUSTOMS

- ❖ Operate as binding rule of law



(II) CONVENTIONAL CUSTOMS

- ❖ Binding due to an agreement between parties
 - ❖ Fully known & clearly established
 - ❖ Reasonable
 - ❖ Can not alter general law of land

REQUISITE OF VALID CUSTOM

- ❖ Immemorial (Antiquity)
 - ❖ Must be ancient
- ❖ Certainty
 - ❖ Not vague & ambiguous
- ❖ Reasonableness
 - ❖ Useful & convenient to society
- ❖ Compulsory observance
- ❖ Conformity with law & public morality
 - ❖ Not opposed to public policy
- ❖ Unanimity of opinion
 - ❖ Must be general OR universal
- ❖ Peaceable enjoyment
 - ❖ Enjoyed peacefully without dispute

(2) JUDICIAL DECISION OR PRECEDENTS

- ❖ Guidance or authority of past decisions
- ❖ Only those decisions which lay down new principles
- ❖ Decisions of high court are binding on all courts & tribunals in its jurisdiction
- ❖ High courts are courts of Coordinate jurisdiction (One's decision is not binding on another)
- ❖ Supreme court (Highest court) decision
 - ❖ Binding on all courts & judicial tribunals of country
- ❖ Supreme court is not bound by its own decisions
 - ❖ If the earlier is found erroneous + detrimental to welfare of public, it can be departed
 - ❖ Not bound by decisions of privy council

KIND OF PRECEDENTS

(I) Declaratory & Original

- ❖ Application of already existing rule of law
- ❖ Decision OR applies new rule of law
 - ❖ ex: vishakha guidelines

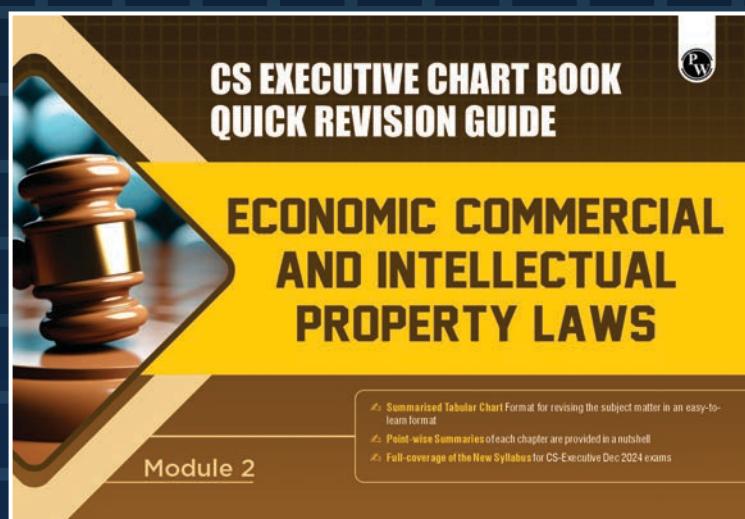
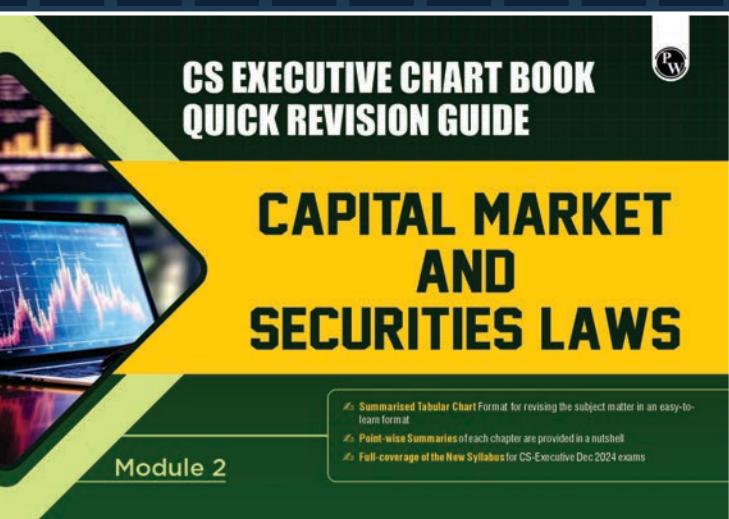
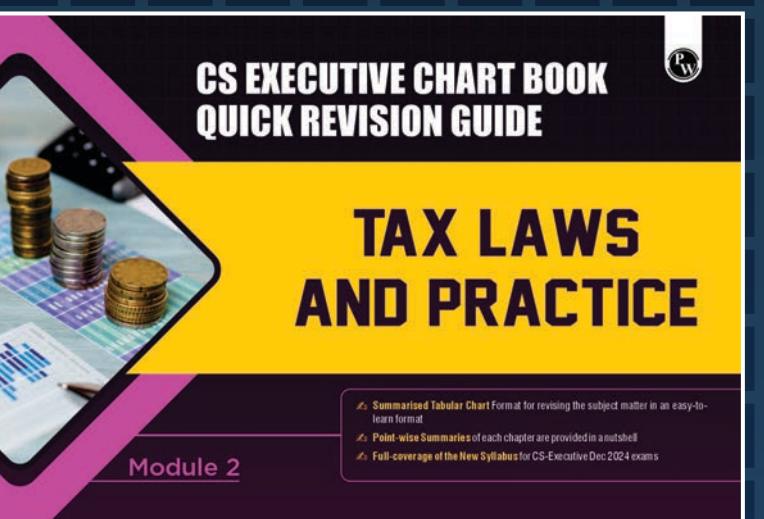
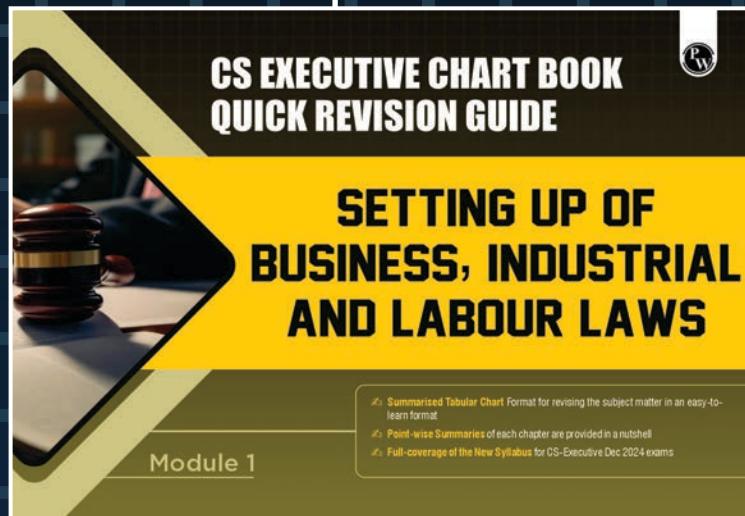
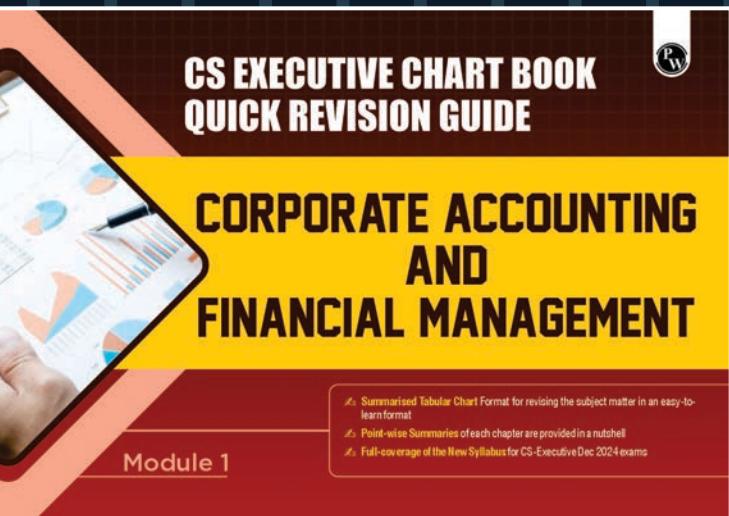
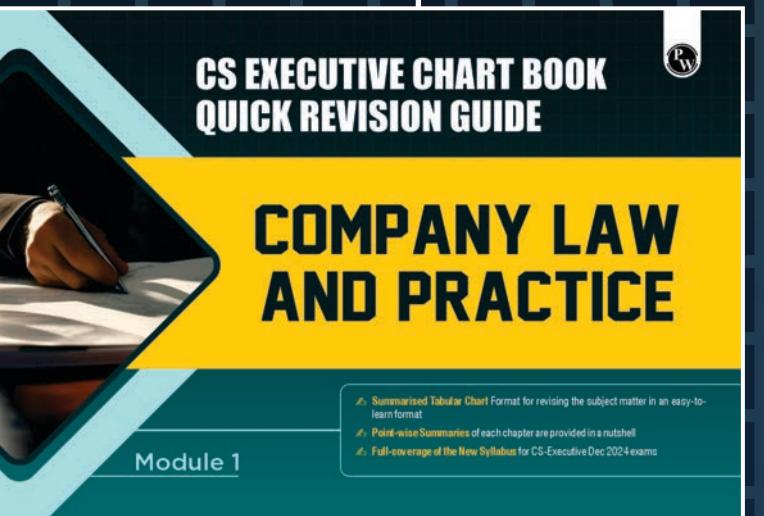
(II) Persuasive Precedents

- ❖ Judges are not bound to follow but which will be taken into consideration
- ❖ Regarded as historical source of law
 - ❖ ex: Decisions of High Court

(III) Absolute authoritative precedents

- ❖ Which judge must follow, whether they approve it OR not
- ❖ Binding force

COMPLETE YOUR PREPARATION



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