LEGAL CONCEPTS

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1. Persons

1.1. Meaning and Kind of Person

The term 'person' is derived from Latin word 'persona' which means a mask worn by actors playing different roles in a drama. In modern days it has been used in a sense of a living person capable of having rights and duties. Now it has been used in different senses in different disciplines.

In the philosophical and moral sense the term has been used to mean the rational quality of human being. In law it has a wide meaning. It means not only human beings but also associations as well. Law personifies some real thing and treats it as a legal person. This personification both theoretically and practically clarifies thought and expression.

There are human beings who are not persons in legal sense such as outlaws and slaves (in early times). In the same way there are legal persons who are not human beings such as corporations, companies, trade unions; institutions like universities, hospitals are examples of artificial personality recognized by law in the modern age. Hence, the person is an important category of concept in legal theory, particularly business and corporate laws have extensively used the concept of person for protection as well as imposing the liability.

1.2. Historical Background of the Concept of 'Person'

The term 'person' and 'personality' has a historical evolution. Roman law, Greek law and Hindu law, has used the concept too. In Roman law, the term had a specialized meaning, and it was synonymous with 'caput' means status. Thus, a slave had an imperfect persona.

In later period it was denoting as a being or an entity capable of sustaining legal rights and duties. In ancient Roman Society, there was no problem of personality as the 'family' was the basic unit of the society and not the individual. The family consisted of a number of individuals, but all the powers were concentrated with 'pater familias' means the head of the family. If a head of the family dies, and there is an interval between his death and devolution of property on the heir who accepted inheritance, the property will vest in a person during the interval. This was called hereditas jacens which was developed by the Romans.

The hereditas jacens is considered by some scholars as similar to legal personality hereditas jacens means the inheritance during the interval between death of the ancestor and the acceptance of the inheritance by the heir. Some scholars are not ready to agree with the views that it has some connection with present doctrine of legal personality, even if it is there, it may be in a very limited sense. There was a provision in Roman law that other institutions or group who had certain rights and duties were capable to exercise their legal rights through a representative.

Under Greek law, an animal or trees were tried in court for harm or death done to a human

being. It can be said on the basis of this practice that these objects were subject to duties even though they may not possesses rights. This is an element of the attribution of personality.

Under early English law, there are some incidences in it had found that an animal or tress or inanimate objects had been tried in Court under law. The trees and animals were subject to duty but not rights. After 1846, this system has modified and it was made clear that animals or tresses are capable of possessing rights and duties; therefore, there is no question of personality.

1.3. Definition of 'Person'

The term 'person' is derived from the Latin term 'Persona' which means those who are recognized by law as being capable of having legal rights and being bound by legal duties. It means both a human being, a body of persons or a corporation or other legal entity that is recognized by law as the subject of rights and duties.

Savingy has defined person as the subject or bearer of right. But Holland has criticised this definition on the ground that persons are not subject to right alone but also duties. He says: the right not only resides in, but is also available against persons. There are persons of incidence as well as of inherence.

Kelson rejected the definition of personality as an entity which has rights and duties. He has also rejected the distinction between human beings as natural persons and juristic persons. He says the totality of rights and duties is the personality; there is no entity distinct from them. However, Kelson's view has been criticised for the reason that in law natural person is different from legal persons who are also capable of having rights and duties and constitute a distinct entity.

Salmond's definition seems to be more correct than the earlier definitions. In the words of Salmond: "So far as legal theory is concerned, a person is any being whom the law regards as capable of rights and duties. Any being that is so capable is a person, whether a human being or not, and no being that is not so capable is a person even though he be a man." Salmond further explains that the extension of the conception of personality beyond the class of human beings is one of the most noteworthy achievements of the legal imagination.

Persons can be classified into (a) natural person, and (b) legal or artificial or juristic person. There are some natural persons who do not enjoy the status of legal persons and vice versa.

1.4. Law of Status

Law of status is the law concerning the natural, the domestic and the extra domestic status of man in civilized society. The law of extra domestic status is the law that is concerned with matters and relations apart from those concerning the family. Thus this department of the law of status deals with the status of persons such as lunatics, aliens, deceased persons, lower

animals etc. These are persons who do not enjoy the status of legal personality but the society has some duties towards them.

1.5. Legal Status of Unborn Person

A child in mother's womb is by legal fiction regarded as already born. If he is born alive, he will have a legal status. Though law normally takes cognizance of living human beings yet the law makes an exception in case of an infant in ventre sa mere.

Under English Law, a child in the womb of the mother is treated as in existence and property can be vested in its name. Article 906 of the French Civil Code permits the transfer of property in favour of an unborn person. But, according to Mohammedan Law a gift to a person not in existence is void. A child in the womb of the mother is considered to be a person both under the law of crimes and law of torts.

Under section 13 of the Transfer of Property Act, property can be transferred for the benefit of an unborn person by way of trust. Similarly section 114 of the Indian Succession Act, 1925 provides for the creation of prior interest before the unborn person may be made the owner of property – corporeal or incorporeal, but no property will be deemed to be vested in the unborn person unless and until he is born alive.

In Hindu Law also a child in the womb of the mother is deemed to be in existence for certain purposes. Under Mitakshara law, such a child has interest in coparcenary property.

Under section 315 of the Indian Penal Code, the infliction of pre-natal injury on a child, which is capable of being born alive and which prevents it from being so could amount to an offence of child destruction. Section 416 of Criminal Procedure Code provides that if a woman sentenced to death is found to be pregnant, the High Court shall order the execution of the sentence to be postponed, and may if it thinks fit, commute the sentence to imprisonment for life.

It has been held that in a Canadian case that a child could succeed in tort after it was born on account of a deformity which was held to have been caused by a negligent pre-natal injury to mother.

Though there is no Indian case on this point but it is expected that a liberal view would be taken on this line and a child would be getting the right to sue. In an African case it was held that a child can succeed in tort after it is born on account of a deformity caused by pre injury to his mother.

In India as well in England, under the law of tort an infant cannot maintain an action for injuries sustained while on ventre sa mere. However, in England damages can be recovered under Fatal Accidents Act, 1846 for the benefit of a posthumous child. In short, it can be concluded that an unborn person is endowed with legal personality for certain purposes.

1.6. Legal Status of Dead Man

Dead man is not a legal person. As soon as a man dies he ceases to have a legal personality. Dead men do not remain as bearers of rights and duties it is said that they have laid down their rights and duties with their death.

Action personalis moritur cum persona- action dies with the death of a man. With death personality comes to an end. A dead man ceases to have any legal right or bound by any legal duty.

Yet, law to some extent, recognises and takes account of the desires or intentions of a deceased person. Law ensures a decent burial, it respects the wishes of the deceased regarding the disposal of his property, protects his reputation and in some cases continues pending action instituted by or against a person who is now deceased.

As far as a dead man's body is concerned criminal law secures a decent burial to all dead men. Section 297 of Indian Penal Code also provides punishment for committing crime which amounts to indignity to any human corpse. The criminal law provides that any imputation aganist a deceased person, if it harms the reputation of that person if living and is intended to hurt the feeling of his family or other near relatives, shall be offence of defamation under sec 499 of the Indian Penal Code.

The Supreme Court in the case of Ashray Adhikar Abhiyan v Union of India has held that even a homeless person when found dead on the road, has a right of a decent burial or cremation as per his religious faith.

In English Law as well as in Muslim Law the violation of a grave is a criminal offence. As regards reputation of a dead man, it is to some extent protected by criminal law. Under Roman law any insult to the body of the deceased at the timing of funeral, gave the deceased's heir a right to sue for the injury as it is treated as insult to the heir.

Under the law of France the relative of the defamed deceased can successfully sue for damages, if they can prove that some injury it suited from the defamation. Thus, it is not the rights and the hence the personality of the deceased that the law recognises and protects but it is the right and interest of living descendants that it is protected.

So far trust is concerned English Law provides the rule that permanent trust for the maintenance of a dead man's tomb is illegal and void and property cannot be tied up for this purpose. This rule has been laid down in the leading case of Williams v. Williams where it was said that a corpse is the property of no one. It cannot be disposed of by will or any other instrument. It was further held in this case that even temporary trusts are neither valid nor enforceable. Its fulfilment is lawful and not obligatory.

It was held in Mathii Khan v. Veda Leiwai that worship at the tomb of a person is charitable and religious purposes amongst Muslims- hence trust is possible.

In Saraswati v. Raja Gopal it was held that worship at the Samadhi of a person, except in a community in which there is a widespread practice of raising tombs and worshipping there at, is not a religious or charitable purpose according to Hindu Law and would not constitute a valid trust or endowment.

Regarding the property of the dead man the law carries out the wishes of the deceased example, a will made by him regarding the disposal of his property. This is done to protect the interest of those who are living and who would get the benefit under the will. This is subject to the rule against perpetuity as well as law of testamentary succession. Indian Transfer of Property Act, section 14 incorporates the rule against perpetuities, which forbids transfer of property for an indefinite time thereby making it alienable.

Section 14 of the TPA restrains the power of creating future interests by providing in the rule against perpetuities that such interest must arise within certain limits. The rule of perpetuity looks to the date at which the contingent interest will vest, if it vests at all, and hold it to be void as "perpetuity if this date is too remote".

Similarly, section 1 and 4 of the Indian Succession Act, 1925 forbids the creation of a will whereby vesting of property is postponed beyond the lifetime of one or more persons and the minority period of the unborn person.

1.7. Legal Status of Lower Animals

Law does not recognise beasts or lower animals as persons because they are merely things and have no natural or legal rights. Salmond regards them mere objects of legal rights and duties but never subjects of them. Animals are not capable of having rights and duties and hence they are not legal persons.

Ancient Law - However, in ancient times animals were regarded as having legal rights and being bound by legal duties. Under the ancient Jewish Code 'if an ox gore (wound with a horn) a man or woman resulting in his or her death, then the ox was to be stoned and its flesh was not to be eaten. There are many examples in ancient Hebrew Codes where cock, bulls, dogs and even the trunk of trees which had fallen on human beings and killed him were tried for homicide.'

There are similar instances in India as well. In number of cases found that, animals were sued in courts in ancient India. There is popular story about the Mughal Emperor Jehangir in which the bullock was presented before the Emperor. However these instances are merely of historical interest and have no relevance in modern law.

Modern Law - Modern Law does not recognise animals as bearer of rights and duties. Law is made for human beings and all things including animals are for men. No animal can be the owner of property from a person to an animal. Animals are merely the object of transfer and are a kind of property, which are owned and possessed by persons. Of course, for the wrongs done by animals the master is held liable. This duty or liability of the master arises due to public policy and public expediency. The liability of the master is strict and not a vicarious liability. The animal could be said to have a legal personality only if the liability of the master is considered vicarious.

In certain cases, the law assumes the liability of the master for an animal as direct while in other cases, liability is not direct. Thus, for keeping animals that are not of dangerous nature

the master is not liable for the damage it may do, unless he knows that it was dangerous. The knowledge of the defendant must be shown as to their propensity to do the act in question.

However, if the animal is of ferocious nature, the master is responsible for the wrong if he shows negligence in handling it. The owner of animals of this class is also responsible for their trespasses and consequent damage. If a man's cattle, sheep or poultry, stray into his neighbour's land or garden, and do such damage as might ordinarily be expected to be done by things of that sort, the owner is liable to his neighbour for the consequences.

A charitable trust can be created for the maintenance of stray cattle, broken horses and other animals. Such a trust is created with a view to promote public welfare and advancement of religion. However, if the charitable trust is created only for the benefit of a single horse or a dog, it cannot be regarded as public charitable trust for instance in Re Dean Cooper Dean v. Stevens a test of charged his property with the payment of annual sum of trustees for the maintenance of his horses and dogs. The court held that it is not valid trust enforceable in any way on behalf of these animals. It was observed that the trustee could/spend the money if they pleased in the manner desired by the testator. But if they did not spend the money it would not be considered a breach of trust and in such a situation the money so spent will be of the representatives of the testator.

Similarly, a bequest for the maintenance of the testator's favourite black mare a bequest of an annual sum for the maintenance of testator's horses and hounds for a period of 50 years if nay those animals should so long live a trust for the benefit of a parrot during the life of two trustees and survivor of them have all been held valid.

Two kinds of persons are recognised by law and those are natural person and legal persons. Legal persons are also known as artificial, juristic or fictitious persons.

(1) According to Holland, a natural person is "such a human being as is regarded by the law as capable of rights and duties—in the Language of Roman law, as having a status." According to another writer, natural persons are "living human beings recognised as persons by the state. The first requisite of a normal human being is that he must be recognised as possessing a sufficient status to enable him to possess rights and duties. A slave in Roman law did not possess a personality sufficient to sustain legal rights and duties. In spite of that, he existed in law because he could make contracts which under certain circumstances were binding on his master. Certain natural rights possessed by him could have legal consequences if he was manumitted. Likewise in Roman law, an exile or a captive imprisoned by the enemy forfeited his rights. However, if he was pardoned or freed, his personality returned to him. In the case of English Law, if a person became an outlaw, he lost his personality and thereby became incapable of having rights and duties. The second requisite of a normal human being is that he must be born alive. Moreover, he must possess essentially human characteristics.

(2) Legal persons are real or imaginary beings to whom personality is attributed by law by way of fiction where it does not exist in fact. Juristic persons are also defined as those things, mass of property, group of human beings or an institution upon whom the law has conferred a legal status and who are in the eye of law capable of having rights and duties as natural persons.

Law attributes by legal fiction a personality of some real thing. A fictitious thing is that which does not exist in fact but which is deemed to exist in the eye of law. There are two essentials of a legal person and those are the corpus and the animus. The corpus in the body into which the law infuses the animus, will or intention of a fictitious personality. The animus is the personality or the will of the person. There is a double fiction in a juristic person. By one fiction, the juristic person is created or made an entity. By the second fiction, it is clothed with the will of a living being. Juristic persons come into existence when there is in existence a thing, a mass of property, an institution or a group of persons and the law attributes to them the character of a person. This may be done as a result of an act of the sovereign or by a general rule prescribed by the government.

A legal person has a real existence but its personality is fictitious. Personification is essential for all legal personality but personification does not create personality. Personification is a mere metaphor. It is used merely because it simplifies thought and expression. A firm, a Jury, a bench of judges or a public meeting is not recognised as having a legal personality. The animus is lacking in their case.

Following are the differences between natural person and legal person:

A. Natural Person

1. A natural person is a human being and is a real and living person.
2. He has characteristics of the power of thought speech and choice.
3. Unborn, dead man and lower animals are not considered as natural persons.
4. The layman does not recognize idiot, company, corporation, idol etc. as persons.
5. He is also a legal person and accordingly performs their functions
6. Natural person can live for a limited period i.e. he cannot live more than 100 years.

B. Legal Person

1. Legal person is being, real or imaginary whom the law regards as capable of rights or duties.
2. Legal persons are also termed “fictitious”, “juristic”, “artificial” or “moral”.
3. In law, idiots, dead men, unborn persons, corporations, companies, idols, etc. are treated as legal persons.
4. The legal persons perform their functions through natural persons only.
5. There are different varieties of legal persons, viz. Corporations, Companies, Universities, President, Societies, Municipalities, Gram panchayats, etc.
6. Legal person can live more than 100 years. Example: (a) the post of “American President” is a corporation, which was created some three hundred years ago, and still

it is continuing. (b) "East India Company" was established in sixteenth century in London, and now still is in existence.

Legal personality is a fictitious attribution of personality by law, a sort of personification of law. Legal persons being artificial creations of law can be of as many kinds as the law devises. *Continental jurisprudence recognizes three kinds of legal persons, namely:*

i. Groups or series of men, usually called corporations: The first class of legal persons consists of corporations, namely those which are constitutes by the personification of groups (e.g., corporation aggregate) or series of individuals (e.g., corporation sole). In State Trading Corporation of India v. Commercial Tax Officer, the Court observed that corporation are undoubtedly legal persons but is not a citizen within the meaning of Article 19 of the Constitution and cannot ask for the enforcement of fundamental rights granted to citizens under the said article.

ii. Institutions like hospitals, libraries etc.: The second class is that in which corporations or object selected for personification not a group of series of persons but an institution is. The law may, if it pleases, regard a church, a hospital or a university or a library as a person. That is to say it may attribute personality not to any group of persons connected with the institution, but to the institution itself. In the tradition and practice of English Law, legal personality is not limited by any logical necessity or indeed by any obvious requirement of expediency to the incorporated bodies of individual persons. In India, institutions like university, temple, public authorities, etc. are considered as legal persons. Under Indian law, trade unions and friendly societies are legal entities. They own properties and suits can be brought in their names though not regarded as corporations.

iii. Funds or estates like the estates of deceased persons: The third kind of legal person is that in which the corpus is some fund or estate devoted to special uses, a charitable fund for example, or a trust estate, or the property or a dead man or of a bankrupt.

1.8. Corporate sole

Corporation sole is a legal entity consisting of a sole incorporated office, occupied by a single man/women and it has legal continuity.

A corporation sole consists of one person only, and the successors of that person in some particular station or office. The King of England is a corporation sole; so is a bishop; and in the Church of England every person and vicar is, in view of the law, a corporation sole.

To understand the concept of corporation sole one needs to deal with two yet similar questions: First, it was necessary to discover what application the concept had, which involved understanding why it had come into being in the first place; but Second, it was necessary to ask what forms of law the use of this concept had excluded. Law, in ruling some things in, is always ruling some things out (though it was by implication the English genius to stretch the terms of this proposition as far as they would go). Even English law could not conjure up terms of art that were infinitely adaptable.

That the corporation sole was a term of art contrived to meet a particular practical problem rather than deduced from a set of general juristic precepts, could not be doubted. Nor could it be doubted that the application of this contrivance was rather limited. But what was surprising was how much, nonetheless, was ruled in, and how much ruled out.

The origins of the corporation sole Maitland traced to a particular era and a particular problem. The era was the sixteenth century, and coincides with what Maitland calls 'a disintegrating process . . . within the ecclesiastical groups', when enduring corporate entities (corporations 'aggregate', which were, notwithstanding the misleading terminology, more than the sum of their parts) were fracturing under political, social and legal pressure.

However, the particular problem was not one of groups but of individuals; or rather, it was a problem of one individual, the parish person, and of one thing, the parish church. Was this thing, a church, plausibly either the subject or the object of property rights? The second question – of objectivity – was the more pressing one, as it concerned something that was unavoidable as a cause of legal dispute, namely 'an exploitable and enjoyable mass of wealth'.

But it could not be addressed without considering the other question, and the possibility that the ownership of this wealth does not attach to any named individuals but to the church itself. The law could probably have coped with this outcome, but the named individuals involved, including not only the person but also the patron who nominates him and the bishop who appoints him, could not. It placed exploitation and enjoyment at too great a remove. Instead, an idea that had been creeping towards the light during the fifteenth century was finally pressed into service, and the person was deemed the owner, not in his own right, but as a kind of corporation, called a 'corporation sole'.

What this meant, in practice, was that the person could enjoy and exploit what wealth there was but could not alienate it. But what it meant in theory was that the church belonged to something that was both more than the person but somewhat less than a true corporation. That it was more than the person was shown by the fact that full ownership, to do with as he pleased, did not belong to any one person at any given time; that it was less than a corporation was shown by the fact that when the person died, ownership did not reside in anybody or anything else, but went into abeyance. Essentially, the corporation sole was a negative idea. It placed ultimate ownership beyond anyone. It was a 'subject less right, a fee simple in the clouds'. It was, in short, an absurdity, which served the practical purpose of many absurdities by standing in for an answer to a question for which no satisfactory answer was forthcoming.

The idea of the corporation sole gave legal fictions a bad name; the corporation sole was a frivolous idea, which implied that the personification of things other than natural persons was somehow a less than serious matter. It was not so much that absurdity bred absurdity, but that it accustoms us to absurdity, and all that that entails.

Finally, however, the idea of the corporation sole was serious because it encouraged something less than seriousness about another office than person. Although the class of corporations sole was slow to spread, it was found serviceable by lawyers in describing at least one other person, or type of person: the Crown. To think of the Crown as a corporation sole, whose personality is neither equivalent to the actual person of the king nor detachable from it, is 'clumsy'. It is in some ways less clumsy than the use of the concept in application to a person.

The central difficulty, that of 'abeyance' when one holder of the office dies, is unlikely to arise in this case: when a person dies there may be some delay before another is appointed, but when a king dies there is considerable incentive to allow no delay, whatever the legal niceties. Nor is it necessarily clumsier than other, more famous doctrines: it is no more ridiculous to make two persons of one body than it is to make two bodies of one person It makes a 'mess' of the idea of the civil service by allowing it to be confused with 'personal' service of the king; it cannot cope with the idea of a national debt ; it even introduces confusion into the postal service (by encouraging the view that the Postmaster-General is somehow freeholder of countless post offices). It also gets things out of proportion, for just as it implies that a single man is owner of what rightly belongs to the state, so it also suggests that affairs of state encompass personal pastimes.

The problem with absurd legal constructions is not simply that serious concerns may be trivialised, but also that trivial matters may be taken too seriously, which is just as time-consuming. 'So long as the State is not seen to be a person [in its own right], we must either make an unwarrantably free use of the King's name, or we must be forever stopping holes through which a criminal might glide.'

Therefore a corporation sole can be defined as a corporation sole consists of one person and his or her successors in some particular office or station, who are incorporated by law in order to give them certain legal capacities and advantages which they would not have in their natural person.

Corporate Aggregate

A corporate aggregate is an incorporated group of co-existing persons. Examples: all private limited companies, all public limited companies, multi-national corporations, public undertaking corporations. "Corporate aggregate" is a fictitious body and created by the policy of men. They may also be called as "body's Politique". A corporate aggregate has several members at a time. These are the private offices. The primary object of corporate aggregate is to do business. It is lesser permanent than corporate sole. Similarly, corporate aggregate also shall have its own properties, debts, with which the shareholders are not concerned. The shareholders are concerned corporation / company subject to the extent of their share amount, not exceeding that. They have their own properties. The debts of the company are not having any connection with their own properties. The debts, profits, losses are related to the share amount only.

So the perfect definition of corporate aggregate would be - Corporation aggregate consist of two or more persons united in a society, which is preserved by a succession of members, either forever or till the corporation is dissolved by the power that formed it, by the death of all its members, by surrender of its charter or franchises, or by forfeiture. Such corporations are the mayor and aldermen of cities, the head and fellows of a college, the dean and chapter of a cathedral church, the stockholders of a bank or insurance company, etc.

A corporation aggregate, or body politic, or body incorporate, is a collection of many; individuals united in one body, under a special denomination, having perpetual succession under an artificial form, and vested by the policy of the law, with a capacity of acting in several respects as an individual, particularly of taking and granting property, contracting obligations, and of suing and being sued; of enjoying privileges and immunities in common, and of exercising a variety of political rights, more or less extensive, according to the design of its institution, or the powers conferred upon it, either at the time of its creation, or at any subsequent period of its existence.

So basically a corporate aggregate consists of several persons, who are united in one society, which is continued by a succession of members. Of this kind are the mayor or commonalty of a city; the heads and fellows of a college; the members of trading companies, and the like. Going by the above description of corporations aggregate, it would logically follow that every form of concerted activity of willing individuals aimed at a particular end, would lead to their acts coming to known through the glass of incorporation which realises their combined operations as one single act, performed by a single personality.

However, it is in this regard that the real limits of artificial personality are discernible. The law deems only certain forms of concerted action as eligible for recognition through incorporation; thus while joint stock companies are recognised as incorporated bodies, associations such as partnerships, trade unions and other organizations are not recognised as incorporated bodies for various reasons. These groups have come to assume the term ‘unincorporated associations’.

In **Saloman v. Saloman and Co**., a trader sold a solvent business to a limited company which consisted of the vendor, his wife and children only. In payment of the purchase money, the company issued debentures to the vendor. Later on, the company went into liquidation. The question for decision was whether this debenture holder was entitled to be paid in preference to the unsecured creditors. The question was answered in the affirmative. It is clear from this case that a man may become his own preferred creditor by taking debentures from a company of he holds practically all the shares. This is due to the fact that the company has a legal personality different from that of the shareholders. This case also shows that one can seek shelter behind this legal person without one’s real connection with the corporation being unmasked.

In **Daimler Company Ltd. v. Continental Tyre and Rubber Co. Ltd**., the respondent company was incorporated in England for the purpose of selling in England tyres made in Germany by a German company. Most of the shareholders of that company were Germans. After the outbreak of war in 1914 between England and Germany, an action was started in the name of the respondent company for the recovery of a trade debt. The action was resisted on the ground that the plaintiff was an “alien enemy” at war with England and hence the suit was

not maintainable. The contention of the plaintiff was that the nationality of the company was distinct from that of its shareholders and as it was registered in England, the declaration of war had no effect on it. The decision was given against the company by the House of Lords. Lord parker observed: "What is involved in the decision of the Court of Appeals is that for all purposes to which the character and not merely the rights and powers of an artificial person are material, the responsibilities of natural persons who are its corporators, are to be ignored. An impassible line is drawn between the one person and the others. When the law is concerned with the artificial person, it is to know nothing of the natural persons who constitute and control it." The House of Lords held that the enemy character of individual shareholders and their conduct could be material on the question whether the company's agents and persons in de facto control of the company were adhering to the enemy. If the persons in control of the company were resident in an enemy country or were adhering to the enemy, that company would assume an enemy character. The House of Lords pierced the veil sought to be drawn over the physiognomy of the company for the purpose of ascertaining who the corporators behind the company were.

In **Wurzel v. Houghton Main Home Delivery Service Ltd**. and in **Wurzel v. Atkinson**, the difference between an incorporated and an unincorporated association with regard to legal consequences was brought out. Under the Road and Rail Traffic Act, 1933, the holder of a private carrier's licence known as "C" licence, was forbidden from using the vehicle for the carnage of goods for hire or reward. A group of miners incorporated a company to get cheap delivery of coal from the colliery. A motor goods vehicle in respect of which the company held "C" licence was used for making delivery of coal at the houses of its members and charges for delivery were deducted from the wages of the members. It was held that as the society was an incorporated one, it was a legal entity distinct from its members and there was a breach-of condition under which "C" licence was held as the vehicle was used for carriage of goods for hire or reward. Another group of miners formed an association without incorporating it. They made use of the vehicle of the association for delivery of coal at the house of its members. It was held that each member was a part-owner of the vehicle and as co-owners could not be said to be carrying their own goods for hire or reward by contributing to the running expenses, there was no breach of the conditions of "C" licence.

The position of the Karta in a Hindu coparcenary is an example of corporate personality. In coparcenary system although each member of the joint Hindu Family has some rights and duties and even though it is a single familial unit, a Joint Hindu Family does not have a separate legal identity and is not a juristic person. It is not capable of holding property and the law does not attribute any personality to a Joint Hindu Family. The Karta is overall head of the joint family who manages the entire family property. He has a right to alienate the property and other members of the family are under his control. He can sue and be sued on the behalf of the joint family. In juristic terms, he is a corporation sole having a double capacity, i.e., as a natural person he is the eldest member of the family and as a legal person he is in the capacity of the Karta of the Joint Family.

According to the long established theory which was founded upon the religious customs of the Hindus, a Hindu idol is a 'juristic entity' having a 'juridical status' and it has the power to sue and being sued. But juridical person in the idol is not the material image but the image develops itself into a legal person when it is consecrated by the Pran Pratistha ceremony.According to Hindu law and various decisions of the courts, the position of idol is that of a minor and a

manager is appointed to act on idol's behalf. Like a minor, an idol cannot express itself and like a guardian, manager has some limitations under which he has to act and perform its duties. According to this rule, Shri Guru Granth Sahib is also a juristic person. But other religious texts such as Gita, Quran, Bible are not considered to be juristic persons.

The Union of India and the States have also been recognized as corporate entities under Article 300 of the Constitution of India. Article 300 relating to Suits and proceedings is as follows:

I. The Governor of India may sue or be sued by the name of the Union and the Government of a State may sue or be sued by the name of the State and may, subject to any provisions which may be made by Act of Parliament or of the Legislature of such State enacted by virtue of powers conferred by this Constitution, sue or be sued in relation to their respective affairs in the like cases as the Dominion of India and the corresponding Provinces or the corresponding Indian States might have sued or been sued if this Constitution had not been enacted.

II. If at the commencement of this Constitution

    I. Any legal proceedings are pending to which the Dominion of India is a party, the Union of India shall be deemed to be substituted for the Dominion in those proceedings; and
    II. Any legal proceedings are pending to which a Province or an Indian State is a party, the corresponding State shall be deemed to be substituted for the Province or the Indian State in those proceedings.

The President of India as also the Governor of the State is a corporation sole like British Crown. The Ministers of Union or State Government are not legal or constitutional entity and therefore, they are not corporation sole. The reason being that they are appointed by the President or the Governors and are 'officers' within the meaning of Articles 53 and 154 of the Constitution. Article 53(1) say that the executive power of the Union shall be vested in the President and shall be exercised by him either directly or through officers subordinate to him in accordance with the Constitution. Similarly, Article 154(1) say that the executive power of the State shall be vested in the Governor and shall be exercised by him either directly or through officers subordinate to him in accordance with the Constitution.

Thus, they are not personally liable for their acts or omissions nor are they directly liable in a Court of law for their official acts. It is the State whether the Centre or the federated unit which is liable for the tort or the breach of contract committed by a Minister in his official capacity.

Partnership firm is not a legal person in the eye of law. There is no legal entity, standing over against the partners. The property and debts of the firm are nothing else than those of the

partners. It can neither sue nor be sued in its own name. The member partners cannot contract with their partnership firm because a man cannot contract with himself.

Unlike a partnership firm which has no existence apart from its members, incorporated company has a distinct legal or juristic existence independent of its members. Under the law, a corporation or a company is a distinct entity (legal persona) existing independent of its members. An incorporated company exists as a complete being by virtue of its legal personality and is often described as an artificial person in contrast with a human being who is a natural person. A company being a legal entity by itself, is separate and distinct from its promoters, shareholders, directors, officers or employees and as such, it is capable of enjoying rights and being subjects to duties which are not the same as those enjoyed or borne by its members. It may sue or be sued in its own name and may enter into contracts with third parties independently and the members themselves can enter into the contract with the company.

1) RBI: The Reserve Bank of India has a corporate existence because it is an incorporated body having an independent existence.

2) UPSC: Union Public Service Commission is not recognized as a legal person as it cannot hold property in their own names and can neither sue nor be sued in a court of law.

3) A Fund dedicated for a Religious Purpose: it was also of the nature of a legal person. It had certain rights and received certain protection from law, such as the property dedicated to a math.

4) Registered Societies: Societies registered under Societies Registration Act, 1860 are also held to be legal persons.

5) Trade Union: Registered trade unions are considered as juristic persons.

6) Institutions like Church, University, Library etc.: these are considered as juristic persons.

7) Under the Indian law, Corporation Aggregate are all those bodies or associations which are incorporated under a statute of the Parliament or State Legislature. In this category comes all trading and non-trading associations which are incorporated under the relevant like the State Trading Corporation, Municipal Corporation, Roadways Corporation, the Public Companies, State Bank of India, the Life Insurance Corporation, the universities, Panchayats, Corporative Societies.

1.9. Limitations to Legal Personality

The limitations of a legal corporate personality have been an issue of constant debate. While the granting of personhood can help make corporations legally responsible for their actions, it also opens the door to many more intricate questions. For example, if a corporation has a personality separate from its shareholders or owners, some argue that it must also have individual rights, such as the right to vote. If granted the right to vote, however, then shareholders will in effect have the right to vote twice: once as private individuals, and once in the personality of the corporation. As this conflict with most voting systems, it remains a controversial issue throughout legal circles.

There are limitations to the legal recognition of legal persons. Legal entities cannot marry, they usually cannot vote or hold public office, and in most jurisdictions there are certain positions which they cannot occupy. The extent to which a legal entity can commit a crime varies from country to country. Certain countries prohibit a legal entity from holding human rights; other countries permit artificial persons to enjoy certain protections from the state that are traditionally described as human rights.

Special rules apply to legal persons in relation to the law of defamation. Defamation is the area of law in which a person's reputation has been unlawfully damaged. This is considered an ill in itself in regard to natural person, but a legal person is required to show actual or likely monetary loss before a suit for defamation will succeed.

In 2010, the United States Supreme Court rendered a decision that many legal scholars describe as a victory for corporation rights. The decision, Citizens United v. Federal Election Committee expanded the free speech rights of corporations by holding that it is unconstitutional to prohibit legal persons from engaging in election expenditures and electioneering. While critics see this ruling as tantamount to allowing corporate-sponsored candidates in the future, proponents argue that it is unfair to grant legal personality that grants equal responsibilities but not equal rights.

Though a company is a legal person, it is not a citizen under the constitutional law of India or the Citizenship Act, 1955. The reason as to why a company cannot be treated as a citizen is that citizenship is available to individuals or natural persons only and not to juristic persons. The question whether a corporation is a citizen was decided by the Supreme Court in State Trading Corporation of India v. Commercial Tax Officer. Since a company is not treated as a citizen, it cannot claim protection of such fundamental rights as are expressly guaranteed to citizens, but it can certainly claim the protection of such fundamental rights as are guaranteed to all persons whether citizens or not. In Tata Engineering Company v. State of Bihar it was held that since the legal personality of a company is altogether different from that of its members and shareholders, it cannot claim protection of fundamental rights although all its members are Indian citizens. Though a company is not a citizen, it does have a nationality, domicile and residence. In case of residence of a company, it has been held that for the purposes of income tax law, a company resides where its real business is carried on and the real business of a company shall be deemed to be carried on where its Central management and control is actually located.

2. Possession

In law, possession is the control a person intentionally exercises toward a thing.

In all cases, to possess something, a person must have an intention to possess it. A person may be in possession of some property (although possession does not always imply ownership). Like ownership, the possession of things is commonly regulated by states under property law.

2.1. Intention to Possess

An intention to possess (sometimes called animus possidendi) is the other component of possession. All that is required is an intention to possess something for the time being. In common law countries, the intention to possess a thing is a fact.

Normally, it is proved by the acts of control and surrounding circumstances.

It is possible to intend to possess something without knowing that it exists. For example, if you intend to possess a suitcase, then you intend to possess its contents, even though you do not know what it contains. It is important to distinguish between the intention sufficient to obtain possession of a thing and the intention required to commit the crime of possessing something illegally, such as banned drugs, firearms or stolen goods.

The intention to exclude others from the garage and its contents does not necessarily amount to the guilty mind of intending to possess stolen goods.

When people possess places to which the public has access, it may be difficult to know whether they intend to possess everything within those places. In such circumstances, some people make it clear that they do not want possession of the things brought there by the public. For example, it is not uncommon to see a sign above the coat rack in a restaurant which disclaims responsibility for items left there.

Possession is very difficult to define in English Jurisprudence. But it very important topic. Human life and society would become impossible without retention and consumption of material and non-material things. Food, clothes, tools, etc. are essential items to use. We get hold over the first to claim possession. It is not just acquisition of things but it is continuing claim for use of them. It may be legal or illegal.

2.2. Corporeal and Incorporeal Possession

Corporeal possession is the possession of a material or tangible objects, thus it is continuing exercise of a claim on the use of material or tangible object.

Incorporeal possession is the possession of a non-material or intangible object. Thus it is continuing exercise of a claim on the use of non-material or intangible object.

There are two essential elements of possession, i.e., animus and corpus.

- Animus is the intent or mental condition or activity or claim of exclusive use of the thing possessed. Cloth at tailor's shop is in possession of tailor but he may not intend to exclude the owner or subject of the owner. Animus may be legal or illegal. The only test is whether the man in possession intends to exclude others or not. General intent is enough to constitute possession. All books in library, all fishes in net, all sheep in flock, are subject of intent whether in knowledge or not, thus possession completes.
- Corpus is second element, which is essential and completes possession. It is objective part of possession. Both animus and corpus are necessary for possession.

The intent to exclude to others from interfering with the object possessed must be evidenced by physical facts. If there is no action then no intention is expressed. Pen in my pocket, ring on my finger, or goods in my home, are corpus of my possession of each of these.

2.3. Kinds of Corporeal Possession

Immediate possession means direct or proximate possession without agency and mediates possession means in between or remote possession. It is acquired with agency.

- A being a servant holds something for his master B. A has immediate possession while possession of B is mediate.
- Where both claim possession, e.g., tenant and landlord.
- In case of bailment, pledge or mortgage, both have claim.

A has exclusive right of possession on his land while right of way over his land is concurrent.

2.4. How the possession is acquired?

- Following are some points which can be referred to acquire or loss the ownership:
- Possession itself is evidence being owner. Pen in my hand is evidence being owner, regardless legally or illegally.
- The person in possession is presumed to be the owner. A house in my possession is presumed my ownership along-with all the things lying in it.
- Anything can be held wrongfully or by fraud.
- Long possession of twelve years confers the title in property, which may belong to others. When a title is conferred to another even without ownership is acquisition of possession.

2.5. Definition

Possession is defined as “it is continuing exercise of a claim to the exclusive use of it.”

It does not cover incorporeal possession. Possession is different from ownership but normally possession and ownership lie together.

How the possession is acquired?

Lease, renting out, pledge, mortgage, theft, fraud, and bailment etc. is the general mode of acquisition of possession.

Possession is of two kinds, i.e.,

- possession in fact or de facto and

- possession in law or de jure.

Some discordance in law and fact occurs. Law something presumes which may not actually exist. Normally possession in law and possession in fact exist in a person but it may vary.

Possession in fact or de facto

It means the possession, which physically exists in term of control over it. It can be seen landlord and tenant where tenant holds possession of house physically or de facto, but it is not possession in law or de jure.

Possession in law or de jure

It is the possession which, in the eyes of law, exists. It may exclude physical control over it. It is also called constructive possession. A servant may possess car, but in the eyes of law, it is possession of master. Possession of bailor through bailee is de jure possession on the part of bailor.

2.6. Importance of possession

Possession is one of the most important concepts in property law. There are three related and overlapping but not identical legal concepts:

i. Possession,
ii. Right of possession, and
iii. Ownership.

In common law countries, possession is itself a property right. The owner of a property has the right of possession and may assign that right wholly or partially to another who may then also assign the right of possession to a third party. For example, an owner of residential property may assign the right of possession to a property manager under a property management contract who may then assign the right of possession to a tenant under a rental agreement. There is a rebuttable presumption that the possessor of property also has the right of possession, and evidence to the contrary may be offered to establish who has the legal right of possession to determine who should have actual possession, which may include evidence of ownership (without assignment of the right of possession) or evidence of a superior right of possession without ownership.

Possession of a thing for long enough can become ownership by termination of the previous owner's right of possession and ownership rights. In the same way, the passage of time can bring to an end the owner's right to recover exclusive possession of a property without losing the ownership of it, as when an adverse easement for use is granted by a court.

In civil law countries, possession is not a right but a (legal) fact which enjoys certain protection by the law. It can provide evidence of ownership but it does not in itself satisfy the burden of proof. For example, ownership of a house is never proven by mere possession of a house.

Possession is a factual state of exercising control over an object, whether owning the object or not. Only a legal (possessor has legal ground), bona fide (possessor does not know he has no right to possess) and regular possession (not acquired through force or by deceit) can become ownership over passage of time. A possessor enjoys certain judicial protection against third parties even if he is not the owner.

Distinction between ownership and possession:

There may be varying degrees of rights to possession. For example, if you leave a book that belongs to you at a cafe and the waiter picks it up, you have lost possession. When you return to recover the book, even though the waiter has possession, you have a better right to possession and the book should be returned. This example demonstrates the distinction between ownership and possession: throughout the process you have not lost ownership of the book although you have lost possession at some point.

Completion of possession:

- Power of possession: It shows possession. Books or watch in my hand excludes others thus possession is complete. Things under lock and key are also possession.
- Presence of possession: A person may be feeble and unable to exclude other but his presence may command respect. Cash in the hand of child is possession.
- Secrecy: Mere knowledge that I have cash in bank, which is exclusive knowledge, is possession.
- Continuing use: I use pen continuously, read book continuously, use of transport continuously, is possession.
- Customs: In some localities people are not allowed to interfere to other things even presence is not there, like in Saudi Arabia where people leave their shops remain open and go to offer prayer and no interference is allowed. It is possession even in absence.
- Respect of rightful claim: In law-abiding societies people do not interfere in the right of other and rightful claim generally obtain security from general acquisition.

Obtaining possession:

Possession requires both control and intention. It is obtained from the first moment that both those conditions exist simultaneously. Usually, intention precedes control, as when you see a coin on the ground and reach down to pick it up. Nevertheless, it is conceivable that a person might obtain control of a thing before forming the intention to possess it. If someone unknowingly sat on and therefore had control of a coin on the seat of a train, he or she could obtain possession by becoming aware of the coin and forming the intention to possess it.

People can also intend to possess things left, without their knowledge, in spaces they control.

Possession can be obtained by a one-sided act by which factual control is established. This can take the form of apprehension (means taking an object not in someone's possession) or seizure (means taking an object in someone's possession). It can also be obtained through a two-sided process of handing over the possession from one party to another. The party handing over possession must intend to do so.

Acquisition of possession:

Possession is acquired when both the animus and corpus are acquired:

- By taking: When someone takes anything, he has possession. It may either be rightful or wrongful possession.
- By delivery: The thing is acquired by delivery with consents of previous possessor.
- Actual delivery:Actual delivery is a kind in which goods are delivered while constructive delivery is the rental or sold goods.

Possession acquired by consent:

Most property possessed is obtained with the consent of someone else who possessed it. They may have been purchased, received as gifts, leased, or borrowed. The transfer of possession of goods is called delivery.

For land, it is common to speak of granting or giving possession.

A temporary transfer of possession is called a bailment. Bailment is often regarded as the separation of ownership and possession. For example, the library continues to own the book while you possess it and will have the right to possess it again when your right comes to an end. A common transaction involving bailment is a conditional sale or hire-purchase, in which the seller lets the buyer have possession of the thing before it is paid for. The buyer pays the purchase price in instalments and, when it is fully paid, ownership of the thing is transferred from seller to buyer.

Possession acquired without consent:

It is possible to obtain possession of a thing without anyone else's consent.

i. First, you might take possession of something which has never been possessed before. This can occur when you catch a wild animal; or create a new thing, such as a food.
ii. Secondly, you might find something which someone else has lost.
iii. Thirdly, you might take something from another person without their consent.

Possession acquired without consent is a property right which the law protects. It gives rise to a right of possession which is enforceable against everyone except those with a better right to possession.

Forms of transferring possession:

There are various forms of transferring possession.

One can physically hand over the object (e.g. handing over a newspaper bought at the newsstand) but it is not always necessary for the party to literally grab the object for possession to be considered transferred.

It is enough that the object is within the realm of factual control (e.g. leaving a letter in the letterbox).

Sometimes it is enough for a symbol of the object which enables factual control to be handed over (e.g. handing over the keys to a car or a house).

Termination of Possession:

One may also choose to terminate possession, as one throws a letter in the trash. Possession includes having the opportunity to terminate possession.

Res nullius

Res nullius means ownerless things or objects. Terra nullius means no man land. A person, who finds lost goods, while passing on road, e.g., a wallet, being first finder, he has good title against the whole world except the true owner, even if it is found on another person property without committing trespass. This is the rule.

Any other person who looks at finder of lost goods cannot demand his share from lost goods. If a customer finds a lost wallet while shopping in a store which is not identifiable, can retain till reasonable time to wait its true owner. He is obliged to bring this matter into the knowledge of shopkeeper and give him his own address. If true owner did not come till reasonable time, he will hold title.

There are many other things which have no owner, i.e., gems stone, metal, gold, silver, natural resources, bird, animal, provided these things are found in way, without committing trespass. Precious stone cannot be held from the area specified by government. Bird or fish cannot be hunt from the area of property holder. Things cannot be hold from others house. Bird cannot be hunt, which is prohibited.

There are three exceptions in this rule:

- Owner of the property on which the thing is found is in possession of the thing itself as well as property, or
- If the finder is servant or agent then master or principal has title, or
- Wrongful act does not constitute possession. Trespass is not allowed.

Important:

Natural resources in economic zone like water, sea, land etc. belong to government. If treasure comes out from others property will also belong to government.

3. Ownership

Ownership is a basic and fundamental jurisprudential concept. As a concept of jurisprudence, it has various views to various people. Ownership has a special place both in legal and social interests of our society. Not only is it seen in our books on jurisprudence, it now appears in our legal system as would be shown in this work.

Ownership appears in our legal system when we look at the claims, privileges, powers and immunities with regard to the things we own. For example the one who owns a house has the claims, powers, privileges over it. It will be shown in this work that ownership is not such an abstract concept only found in our books but it is seen in our day to day activities as humans.

3.1. Definition

Ownership is defined by the Black's law dictionary as the collection of rights allowing one to use and enjoy property.

J. W. Salmond in his book "Salmond on Jurisprudence", talks about ownership as the relationship between a person and an object which forms (forming) the subject- matter of his ownership. It consists in a complex of rights all of which are rights in rem being good against the entire world and not merely specific persons.

John Austin in his book "Jurisprudence" II gave his own view on the definition or concept of ownership as a right – indefinite in point of user - unrestricted in point of disposition - and unlimited in point of duration over a determinate thing.

Reginald W. M. Dias has his own view on the concept of ownership. After studying Salmond and other jurisprudential scholars, Dias came to the conclusion that 'a person is owner of a thing when his interest will outlast the interests of other persons in the same thing.'

Dr. C. C. Wigwe in his book defined ownership in a crystal clear way and his definition cuts across all the common views on ownership. Dr. Wigwe's view on ownership is that ownership is a bundle of right and privileges exclusive in character and indefinite in point of time.

Learned jurist Niki Tobi JCA (as he then was) defined ownership in *Abraham v. Olorunfunmi* as the totality or bundle of rights of the owner over and above every other person on a thing.

In essence, Salmond views ownership as being indeterminate in duration and residuary in nature, Dias sees ownership as an outlasting interest on right or object. Austin holds his own view on ownership as a strong right a person has over an object which is greater than the right of others. Dr. Wigwe then gives us a definition of ownership which takes into cognizance the common traits of ownership in various definitions by different scholars; putting it as a right or privilege which is exclusive to the holder of the right and long lasting to the holder of such right. Authoritatively, one can say that ownership is a right which a person or legal entity has over and above others.

3.2. Who is an Owner?

The concept of ownership has been clearly spelt out above through the various definitions of different scholars. Now it is time to know who an owner is. It is only logical that where there is ownership, an owner must be present. Who then is an owner? Looking extensively at the definition of ownership put forward by Niki Tobi JCA (as he then was) in *Abraham's case* (supra), one can decipher that an owner is one who is not subject to the right of another person over a property (chattel) "Because as a matter of law and fact, there's no other party's right over the property that is higher than his".

Essentials of Ownership

There are essential features of ownership. They are

i. It is definite to the user (no limitation). He who declares himself as an owner over a property or right has no limitation whatsoever over that which he owns.
ii. Ownership is unrestricted at the point of alienation or disposition. An owner has unrivalled power to give out that which he owns. No other higher authority or power can rival that of the owner to dispose of that which he owns.
iii. A right to possess that which he owns. Ownership affords the owner with the right to enter into possession or possess that which he owns.
iv. An owner can part with several parts of that which he owns and will still be the owner of the remaining whole. It does not matter what he section, he parts with, he still has ownership of the remain part as long as he has not parted, alienated or disposed of that which he owns.

3.3. Types of Ownership

1. Corporeal And Incorporeal Ownership
2. Sole Ownership And Co-Ownership
3. Legal And Equitable Ownership
4. Trust Ownership And Beneficial Ownership
5. Absolute Ownership And Limited Ownership
6. Vested And Contingent Ownership

1. Corporeal And Incorporeal Ownership:

Corporeal ownership refers to ownership of a physical object (that which can be perceived by senses). Incorporeal ownership is ownership of a right which does not exist in a physical state (that which cannot be perceived) e.g. intellectual property.

2. ***Sole Ownership And Co-Ownership:***

Sole ownership refers to that which one individual owns. Where there is more than one person owning a property then that is co-ownership.

3. ***Legal Ownership And Equitable Ownership:***

Simply put, legal ownership is ownership based on common law. Equitable ownership comes from equity and it is based on the principles of equity.

4. ***Trust Ownership And Beneficial Ownership:***

Trust ownership is between two people known as the trustee and beneficiary. The trustee is merely an agent upon whom the law has placed duty to administer the rights over the property for a beneficiary. (The trustee is called upon to use his ownership for the good of the beneficiary.) Beneficiary ownership deals with the beneficiary of a trust who has the full enjoyment and complete ownership of his property.

5. ***Absolute Ownership And Limited Ownership:***

Absolute ownership is when possession, enjoyment, disposal are complete and vested without restrictions (all the rights to the exclusion of all). Limited ownership occurs when there are limitations on the user e.g. in terms of disposal rights.

6. ***Vested Ownership And Contingent Ownership:***

Vested ownership is having perfect right (enjoyment and privilege) over a future property (ownership of a chattel). Ownership is said to be contingent when it is capable of being perfect after the fulfilment of certain conditions.

Ownership is important and vital in today's society. Ownership is not restricted solely to material or animate objects. It also extends to inanimate objects such as rights (constitutional rights, human rights etc.). Ownership is a universal concept although there are variations of ownership which differ based on legal systems. No matter the different variations of ownership, in legal systems, ownership still has its essential features which I have already pointed out.

4. Liability

Liability is the result of a violation of the law. Law lays down is down the right and duties on the individual. The law awards legal rights to one individual and imposes the duty upon another person. A person should not infringe is the legal right of others. If anybody violates the legal right of another, he is said to have committed a wrong. If there is a wrong there is a liability.

4.1. Definitions

It is difficult to define the term 'liability' Some Eminent Jurists made attempt to define the term 'liability'.

According to Sir John Salmond, "liability or responsibility is the bond of necessity that exists between the wrongdoer and the remedy of the wrong."

According to Markby, the word 'liability' is used to describe the condition of a person who has a duty to perform whether that duty is primary one or secondary or sanctioning one.

Austin prefers to use the term 'imputability' to 'liability'. According to him, Those certain forbearances, Commissions or acts, together with such of their consequences, as it was the purpose of the duties to avert, are imputable to the persons who have forborne omitted or acted.

4.2. Types of Liability

4.2.1. Civil Liability

Civil liability is the enforcement of the right of the plaintiff against the dependent in civil proceedings. Civil liability gives rise to Civil Procedure whose purpose is to the enforcement of certain rights claimed by the plaintiff against the defendant. Examples of civil proceedings are an action for recovery of the Debt, Restoration of property, the specific performance of a contract, recovery of damages, the issuing of an injunction against the threatened injury etc.

4.2.2. Criminal Liability

Criminal liability is the liability to be punished in a criminal proceeding. in criminal liability, punishment is awarded to a wrongdoer. If the person is guilty of committing the offense with criminal intension then he is liable for punishment. Criminal liability is based on

the Maxim "***actus non facit reum nisi mens sit rea***" it means the offender is guilty only when it is done with the guilty mind.

4.2.3. Penal Liability

The theory of penal liability is concerned with the punishment of wrong. There are **different kinds of punishment,** Deterrent, preventive, retributive, reformative etc.A penal liability can arise either from a criminal or a civil wrong. There are three aspects of penal liability those are the conditions, incidence, and measure of a liability. As regards the conditions of penal liability, it is expressed in the maxim "actus non facit reum nisi mens sit rea" This means that the Act does not constitute guilt unless it is done with guilty intention. Two things are required to be considered in this connection and those are the act and the mens rea requires the consideration of imitation and **negligence**. The act is called the material condition of penal liability and the mens rea is called the formal condition of penal liability.

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