



RAMA UNIVERSITY

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FACULTY OF JURIDICAL SCIENCES

Course : LL.B. 1st Semester

SUBJECT: Jurisprudence

SUBJECT CODE: LLB 301

LECTURE: 26

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Lecture-26



Lecture: 26 Theories Related To The Legal Right

Theories Related To The Legal Right

- **Interest Theory**

Developed by: Rudolf Von Jhering

Rudolf Von Jhering stated that Legal right is the legally protected interest. He gave importance to the interest of the people rather than the will of the people. The main objective is to protect the interests of the people and to avoid the conflict between the individual interest.

Their interest exists in the life of the community itself. They are not created by any statute.

Salmond positive view:

He supported this theory but he stated that its enforceability is an essential condition.

Salmond criticism:

He criticized the interest theory on the ground that the interest is not protected by the state. In order to confer a legal right, it is essential that interest should be protected and recognized by the state.

Gray view:

He said that this theory is partially correct because a legal right is not an interest in itself but it is only meant to protect the interests of an individual. He also stated that legal rights confer the right on the person to do a certain act / to forbear by imposing a legal duty on them through the agency of law “state”.

Dr Allen view:

It can be said that both the theories are not contradictory to each other but it is the combination of both the theories. He tried to combine these two theories by pointing out that the essence of legal right seems to be, not legally guaranteed power by itself nor legally protected by itself, but the legally guaranteed power to realise an interest. It can be concluded that both theories are the essential ingredients of the legal right.

- **Will theory**

Supported by: Kant, Hegel, Hume

According to his theory “rights is an inherent attribute of the human will”. The purpose of the law is to permit the expression of free will. The subject matter is derived from the human will. Rights are defined in the terms of will by Austin, Pollock and Holland. According to John Locke, “the basis of the right is the will of the individual”. According to Puchta the legal rights gives power to the person over the object which by means of right can be subjected to the will of the person who is enjoying the right.

Criticized by: Duguit

According to him the basis of the law is not a subjective will but it is an objective will. The purpose of the law is to protect only those acts which further support social solidarity. He further stated that the theory of subjective right is a metaphysical abstraction.

SELF-TEST QUESTIONS

S.N	Question	Option (a)	Option (b)	Option (c)	Option (d)
1	Who propound Interest Theory	Rudolf Von Jhering	Kant	Hegel	Hume
2	Who are supporter of Will theory	Kant, Hegel, Hume	Rudolf Von Jhering	Duguit	Salmond
3	Who said legal rights gives power to the person over the object which by means of right can be subjected to the will of the person who is enjoying the right.	Puchta	Rudolf Von Jhering	Duguit	Salmond
4	Who said legal rights confer the right on the person to do a certain act / to forbear by imposing a legal duty on them through the agency of law "state".	Gray	Kant	Hegel	Hume
5	Who criticized the interest theory on the ground that the interest is not protected by the state.	Salmond	Kant	Hegel	Hume

Answers: 1-(a),2-(a), 3-(a),4-(a), 5-(a)