

SYNOPSIS

Legal rights – claim and power

Legal obligations – duty and liability

Justice

Shades of Justice

Legal rights

A legal right is something that is due to a person by just claim or legal guarantee. It has got two shades¹ of meaning ie claim and power.

Claim

Claim is a sign that some other person is required to conform to a pattern of conduct. Every claim implies the existence of a correlative duty, since it has no content apart from the duty. The statement ‘X has a claim’, is vacuous; but the statement, ‘X has a claim that Y ought to pay him Rs.100’, is meaningful because its content derives from Y’s duty. Corollary to claim is liberty, the freedom which a person has to do or not to do something. A claim implies a correlative duty, but a liberty does not. X’s liberty to wear a half-pant is not correlative to a duty in anyone. There is indeed a duty in Y not to interfere, but Y's duty not to interfere is correlative to X's claim against Y that he shall not interfere.

Power

Power denotes ability in a person to alter the existing legal condition, whether of oneself or of another, for better or for worse. The phrase ‘alter the existing legal condition’ means creation of new rights and obligations. Liability as the correlative

¹ Lighter shade and darker shade eg light blue and dark blue.

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of power denotes the position of a person whose legal condition can be so altered. Power may be public or private. When exercised by a public body, power is termed as authority; but when exercised by a private person it is termed as capacity. Public power when coupled with duty is ministerial but when coupled with liberty is discretionary eg a judge is under duty to make decision in the case before him but reaching to decision is his liberty. Immunity denotes freedom from the power of another such as immunity of members during parliamentary proceeding or of witness during judicial proceeding. Disability denotes the absence of power eg a government cannot act against the constitution for it has no authority, a minor cannot contract on his own for it has no capacity.

## **Legal obligations**

A legal obligation is something that a person is bound to do or forbear from doing (not to do), whether such duty is imposed by law, contract, promise, or social relations. It has also got two shades of meaning ie duty and liability.

### **Duty**

A duty is an act which one ought to do such that if not done it would be a wrong.

### **Liability**

One who commits a wrong is liable for it. Wrong is an act contrary to law, *injuria*, a violation of law. A person is liable when injury is caused even if such injury, whether intended or unintended, does not result in damage to anyone (*Injuria sine damnum*). But a person is not liable when he has caused damage to someone without any injury (*Damnum sine injuria*).

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Liability is correlated to power in the sense that if X contracts (alters the existing legal condition) with Y then he makes Y liable for the obligation on his part. Similarly, when a judge decides in a case (alters the existing legal condition) then the parties to the case are liable to abide by the decision.

Justice²

Justice is identified with a certain attitude of the human mind, a willingness to be fair and a readiness to give recognition to the claims and concerns of others. The just employer is willing to consider the reasonable demands of his employees. The just judge is determined to eschew partiality and bias toward one party in a lawsuit. The just lawgiver is disposed to pay attention to the interests of all persons and groups whom he is under a duty to represent. Thus, the willingness to give everyone his due is ingrained in the concept of justice and is aptly expressed in the maxim *suum cuique* (render everyone his due). Justice calls upon men to liberate themselves from their exclusively self-regarding impulses and render everyone his due. It is obvious that the mere cultivation of a mental attitude of fairness and concern for others is not, in and by itself, sufficient to bring about the reign of justice. The good will to do justice must be implemented by practical measures and institutional means designed to achieve the goals of a just society. Law ensures social order through dispensation of justice. While order focuses on the formal structure of the social and legal system, justice looks to the content of legal norms and institutional arrangements, their effect upon human beings, and their worth in terms of their contribution to human happiness and the building of civilizations. It is the notion of justice which directs our

² Bodenheimer 2018 Sec 49

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attention to the fairness and reasonableness of the rules, principles, and standards that are the component parts of the normative edifice.

Shades of justice

Distributive justice signifies just allocation of rights and obligations to members of society through legal imposition. Corrective justice is administered by a court or quasi-judicial body when a norm of distributive justice has been violated by a member of society. It may be restitutive as well as retributive. Contractual justice seeks to enforce fair terms between stronger and weaker parties to a contract. Behavioural justice seeks to redress exploitation by an unfair member of society.

Distributive justice³

Distributive justice is primarily concerned with the allocation of rights, powers, duties, and burdens to the members of a society or group. The range of the problems falling within this category of justice is extremely wide, and only a few examples can be given. Should all members of a community who have reached a certain age be granted the right to vote and hold public office, or should these rights be reserved to certain restricted classes of persons? Should people be allowed to speak and assemble freely without hindrance and limitations? What should be the rate of remuneration for work and services? Who should be the heirs of a person who has died intestate, and in what proportion should they share in the assets of the estate? Should people over a certain age be entitled to a pension or other special benefits, and how should such benefits be computed? What system of taxation should be used to insure an equitable distribution of the national

³ Bodenheimer 2018 Sec 49

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income? What kind of a system of prohibitions and penalties should be instituted to protect the public peace and safety? It will easily be seen that the problems of justice presented in these examples are usually dealt with by authorities endowed with powers of a legislative character. A just law would, in this view, be one which treats like situations alike; an unjust law allocates rights and duties unequally without a plausible ground. Distributive justice does not, however, exhaust its significance in the postulate of non-discrimination. Neither semantic usage nor any other weighty consideration militates against speaking of injustice when basic freedoms are denied to all members of a community, when the government fails to provide elementary guarantees of safety and security, when everybody is taxed at a confiscatory rate. The task of providing opportunities for people to reach their potential and obtain the occupational position in society for which they are best fitted is also within the province of justice. A just order of society must minister to human needs other than the need for equal treatment. In democratic countries, distributive justice is usually dispensed by a legislative body elected by the people. The judiciary also partakes in the prerogative to dispense distributive justice to the extent that judges are granted discretion to lay down general rules. Problems of distributive justice, such as the fixing of wage rates and working hours, may also arise in private organizations. In schools and universities, such problems may become acute in regard to the fairness of grading systems and the proper distribution of scholarship funds.

### Corrective justice<sup>4</sup>

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<sup>4</sup> Bodenheimer 2018 Sec 49

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Corrective justice comes into play when a norm of distributive justice has been violated by a member of a community. It will then become necessary to make amends for a wrong or deprive a party of an unjustified gain. Corrective justice is usually administered by a court or other organ invested with judicial or quasi-judicial powers. Its chief fields of application are contracts, torts, and crimes. A breach of contract will be rectified by a judgment decreeing the payment of damages, unless some other remedy (such as specific performance) is provided. A proper award of compensation will also be the duty of a judge in cases where intentional or negligent injuries have been inflicted by a tortfeasor. In the field of criminal law, issues of corrective justice are presented in determining the sentence to be imposed upon a convicted offender. Corrective justice may call for restitution (ie making good the loss) or retribution (ie infliction of pain, punishment). **Restitution** is reflected through damages, injunctions and restoration, the purpose being compensation (ie to compensate the loss sustained to the injured by the wrongdoer). **Retribution** is reflected through penal interest, penalty, and imprisonment depending upon the gravity of the nature of the transgression, the purpose being fulfilment of the desire of vengeance of the society. A person filing tax return on time may resent if the person not filing on time goes free without impunity. Retribution (punishment) also acts as a deterrent ie to deter the wrongdoer in repeating the transgression as well as the general observer in attempting the transgression.

Contractual justice⁵

There is also room for applying the concept of justice, in a more narrowly circumscribed acceptation, to the sphere of contractual

⁵ Bodenheimer 2018 Sec 49

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arrangements between individuals, groups, or states. In the normal situation, questions of justice will not arise in a contractual context when two or more parties, of their own free and uncoerced will, assume certain obligations towards each other. It may happen, however, that one party withholds from the other information relevant to the formation of a contractual intent or makes deliberate misrepresentations in order to induce acceptance of an offer. It may also occur that a party to a private agreement or international treaty uses a superior position of power to force its terms upon the weaker party. Furthermore, an organization acting as a bargaining representative for workers, employees, or other groups may negotiate a collective agreement in disregard of essential interests of those it is under a duty to represent. In such situations, the resulting contract or treaty, although it is in form voluntary rather than authoritatively imposed, may bear the taint of injustice.

Behavioural justice⁶

There is a last signification of justice which is of a more marginal character than those already discussed. "The term unjust," said Aristotle, "is held to apply both to the man who breaks the law and the man who takes more than his due, the unfair man. Hence it is clear that the law-abiding man and the fair man will both be just." In these passages, the terms justice and injustice are not limited to the legislative imposition, judicial interpretation, and contractual stipulation of norms. They are extended to the realm of individual conduct and used to characterize unlawful and unfair acts of one person directed against a fellow man. A man who cruelly beats a child may be declared unjust according to this broad understanding of the word. The same appellation may

⁶ Bodenheimer 2018 Sec 49

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be applied to a man who callously disappoints an expectation which, by his words or actions, he has raised in another person.