

LEGAL RIGHTS AND DUTIES

8 CLASSIFICATION OF RIGHTS

THEORIES OF RIGHTS ETC

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CLASSIFICATION OF RIGHTS AND DUTIES

Right means claims, titles, liberties, powers and immunities summed together.

CLASSIFICATION OF RIGHTS

1. Perfect and Imperfect Right

A right which is enforceable by law is a perfect right but a right which is not enforced by law is an imperfect right.

For Example-

Time barred debt.

2. Right in Rem and Right in Personam

Right in Rem → against the whole world.

For Example- Right to go on a public road.

Right in Personam → against an individual.

3. Antecedent Right and Remedial Rights

A substantive law may either be antecedent or remedial.

Antecedent right may either be a right in rem or a right in personam.

For Example-

Purchaser of certain goods has an antecedent right over the goods so purchased. When antecedent right is violated then the role of remedial right begins.

4. Proprietary and Personal Rights

A person proprietary rights constitute his estate, his assets and his property. These rights have some economic or monetary significance and are elements of wealth.

For Example-

Money in a man's pocket or bank or land, houses etc are proprietary rights.

On the other hand the personal rights are elements in a person's well being. They have no monetary value.

For Example-

Right of reputation, personal liberty, freedom from bodily harm etc.

5. Right in re-propria and Right in re-alina

Right in re-propria means right over one's own property.

Right in re-alina means right over the property of someone else.

6. Principal Right and accessory Rights

The existence of principal right is independent of any other right but accessory rights are ancillary to principal right.

7. Vested and Contingent Right

Vested right occurs when all the facts have been completed.

Contingent right occurs when some events is necessary to happen.

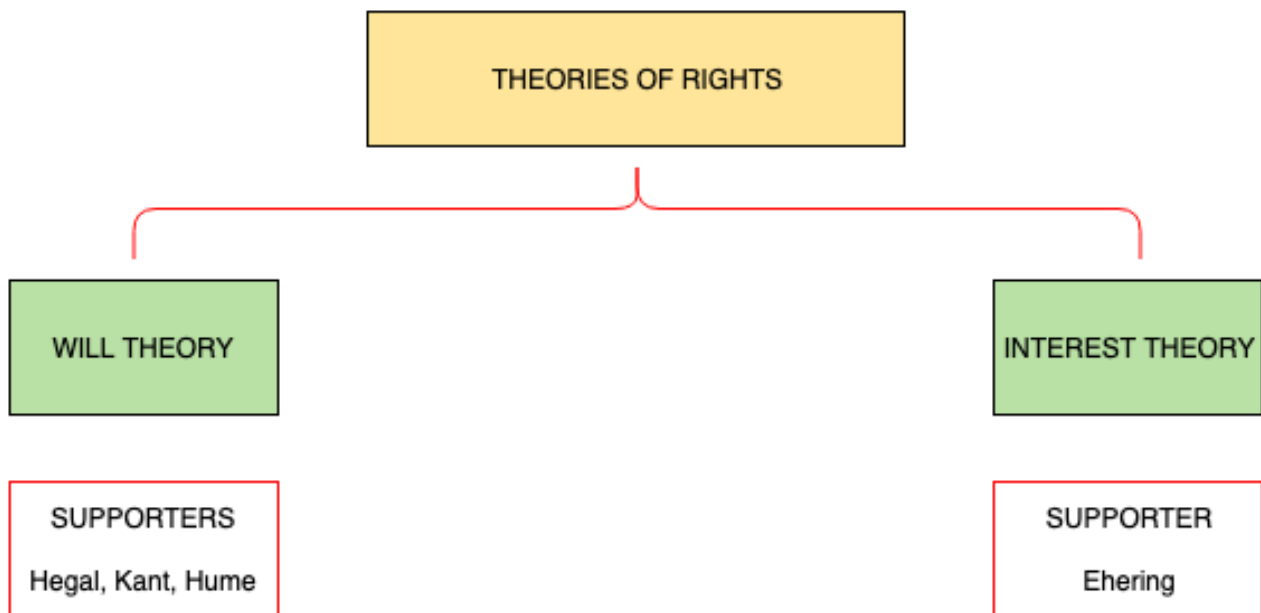
8. Public and Private Rights

The violation of public rights which affects the community as a whole. They are called crimes. Violation of private rights are called civil injuries or tort.

THEORIES OF RIGHTS

1. WILL THEORY

2. INTEREST THEORY



Will Theory - Supporters - Hegel, Kant, Hume.

According to this theory, a right is an inherent element of the human will. The subject matter of right is derived from human will. The theory suggests that it is through a right that a man expresses his will over an object.

Interest Theory- Supporters - German jurist Ehering.

According to this theory, '**A legal right is a legally protected interest**'. Ehering says the basis of legal right is interest and not will. The main object of law is protection of human interest and resolve the conflicts between human interests.

However Salmond criticised this theory of Ehering.

***LEGAL RIGHT IS AN INTEREST WHICH IS
RECOGNISED AND PROTECTED BY LAW***

LEGAL DUTIES

A duty is an obligatory act. It means it is an act the opposite of which would be a wrong. Thus duties and wrongs are generally co-related. The commission of a wrong is the breach of duty and the performance of a duty is avoidance of wrong.

CLASSIFICATION OF LEGAL DUTIES

1. Positive and Negative Duty

Positive Duties → to do an act.

Negative Duties → not to do an act.

2. Primary and Secondary Duty

A duty may be either primary or secondary.

Primary duty is independent. Secondary duty is dependent (but exist for the enforcement of other duties.)

3. Absolute and Relative Duties

Absolute duties are those duties which are owed only to the state; breach of which is generally called a crime and remedy is punishment.

Relative duties are owed to any person; breach of which is a civil injury (tort) and the remedy is compensation.

Austin also supports the view that certain duties are absolute, they do not have a corresponding right.

For Example-

Duty towards God, Duty towards state, Duty towards himself, Duty towards animals.

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