"Law and legal studies".

In Section 1 of this course you will cover these topics:

- An Introduction To Law And Justice
- Systems Of Law And Justice
- A History Of Law And Justice In America

Topic : An Introduction To Law And Justice

Topic Objective:

At the end of this topic student would be able to:

- Define the system of law
- Discuss the types of law and justice

Definition/Overview:

Law: Law is a system of rules, usually enforced through a set of institutions. It shapes politics, economics and society in numerous ways.

Contract law: Contract law regulates everything from buying a bus ticket to trading swaptions on a derivatives market.

Property law: Property law defines rights and obligations related to transfer and title of personal and real property, for instance, in mortgaging or renting a home.

Trust law: Trust law applies to assets held for investment and financial security, such as pension funds.

Tort law: Tort law allows claims for compensation when someone or their property is injured or harmed.

Criminal law: If the harm is criminalisedin a penal code, criminal law offers means by which the state prosecutes and punishes the perpetrator.

Constitutional law: Constitutional law provides a framework for creating laws, protecting people's human rights, and electing political representatives.

Administrative law: Administrative law relates to the activities of administrative agencies of government.

International law: International law regulates affairs between sovereign nation-states in everything from trade to the environment to military action.

Key Points:

1. Law

Law manifests itself throughout the community in many more ways, and serves as the foremost social mediator of relations between people. "The rule of law", wrote the ancient Greek philosopher Aristotle in 350 BC, "is better than the rule of any individual."

2. Legal System

Legal systems around the world elaborate legal rights and responsibilities in different ways. A basic distinction is made between civil law jurisdictions and systems using common law. Some countries persist in basing their law on religious texts. Scholars investigate the nature of law through many perspectives, including legal history and philosophy, or social sciences such as economics and sociology. The study of law raises important questions about equality, fairness and justice, which are not always simple. "In its majestic equality", said the author Anatole France in 1894, "the law forbids rich and poor alike to sleep under bridges, beg in the streets and steal loaves of bread." The central institutions for interpreting and creating law are the three main branches of government, namely an impartial judiciary, a democratic legislature and an accountable executive. To implement and enforce the law and provide services to the public, a government's bureaucracy, the military and police are vital. While all these organs of the state are creatures created and bound by law, an independent legal profession and a vibrant civil society inform and support their progress.

3. Justice

Justice refers to the distribution of things and position of people within society. Closely linked to fairness, views of what constitutes justice vary from society to society (and person to person), but some concept of justice is one of the key features of social organisation. It can also refer to the administration of law within a society.

Justice concerns the proper ordering of things and persons within a society. As a concept it has been subject to philosophical, legal, and theological reflection and debate throughout history. According to most theories of justice, it is overwhelmingly important: John Rawls, for instance, claims that "Justice is the first virtue of social institutions, as truth is of systems of thought.": Justice can be thought of as distinct from and more fundamental than benevolence, charity, mercy, generosity or compassion. Studies at UCLA in 2008 have indicated that reactions to fairness are "wired" into the brain and that, "Fairness is activating the same part of the brain that responds to food in rats... This is consistent with the notion that being treated fairly satisfies a basic need" . Research conducted in 2003 at Emory University, Georgia, involving Capuchin Monkeys demonstrated that other cooperative animals also possess such a sense and that "inequality aversion may not be uniquely human." indicating that ideas of fairness and justice may be instinctual in nature.

- A norm indicates societal expectations of what is right or normal.
- Some laws compel conduct while others serve to facilitate voluntary actions by providing guidelines for them.
- The concept of natural law serves to limit the power of government
- There is an inherent conflict between natural law and positive law

Robert Nozicksinfluential critique of Rawls argues that distributive justice is not a matter of the whole distribution matching an ideal pattern, but of each individual entitlement having the right kind of history. It is just that a person has some good (especially, some property right) if and only if he or she came to have it by a history made up entirely of events of two kinds:

- **Just acquisition,** especially by working on unowned things; and
- **Just transfer,** which is free gift, sale or other agreement, but not theft.

If the chain of events leading up to the person having something meets this criterion, then he or she is entitled to it: it is just that he or she possesses it, and what anyone else has, or does not have, or needs, is irrelevant. On the basis of this theory of distributive justice, Nozick argues that all attempts to redistribute goods according to an ideal pattern, without the consent of their owners, are theft. In particular, redistributive taxation is theft. According to the utilitarian, justice requires the maximization of the total or average welfare across all relevant individuals. This may require sacrifice of some for the good of others, so long as everyones good is taken impartially into account. Utilitarianism, in general, argues that the

standard of justification for actions, institutions, or the whole world, is impartial welfare consequentialism, and only indirectly, if at all, to do with rights, property, need, or any other non-utilitarian criterion. These other criteria might be indirectly important, to the extent that human welfare involves them. But even then, such demands as human rights would only be elements in the calculation of overall welfare, not uncrossablebarriers to action.

Topic : Systems Of Law And Justice

Topic Objective:

At the end of this topic student would be able to:

- Discuss the systems of law and justice
- Discuss legal system
- Describe civil law

Definition/Overview:

Legal systems: In general, legal systems around the world can be split between civil law jurisdictions, on the one hand, and systems using common law and equity, on the other.

Civil Law: The term civil law, referring to a legal system, should not be confused with civil law as a group of legal subjects, as distinguished from criminal law or public law.

Key Points:

1. Legal System

A type of legal system still accepted by some countries in part, or even in whole is religious law, based on scriptures and interpretations thereof. The specific system that a country follows is often determined by its history, its connection with countries abroad, and its adherence to international standards. The sources that jurisdictions recognise as

authoritatively binding are the defining features of legal systems. Yet classification of different systems is a matter of form rather than substance, since similar rules often prevail.

2. Though all legal systems must deal with similar issues, different countries often categorise and name legal subjects in different ways. Quite common is the distinction between "public law" subjects, which relate closely to the state (including constitutional, administrative and criminal law), and "private law" subjects (including contract, tort and property). In civil law systems, contract and tort fall under a general law of obligations and trusts law is dealt with under statutory regimes or international conventions. International, constitutional and administrative law, criminal law, contract, tort, property law and trusts are regarded as the "traditional core subjects", although there are many further disciplines which might be of greater practical importance.

- The concept of equity expresses a concern for fairness.
- Civil law systems use a detailed enumeration of rules and regulations
- Judges in Nazi Germany followed civil law
- Judges in civil law countries are unelected civil servants
- In civil law systems, legislation is considered the only authoritative source of law
- Equity does not require trial by jury
- A key tool in enforcing equity decisions is the injunction
- A system of equity can conflict with a rational legal system
- In the inquisitorial system judges question witnesses.
- The judicial branch must interpret statutes of the legislative branch because they are often ambiguous
- The basic pattern of legal reasoning in the system of case law is reasoning from case to case
- Procedural law can be criminal or civil
- Many administrative agencies have a combination of executive, legislative, and judicial powers

3. Public International Law

Public international law concerns relationships among sovereign nations. It has a special status as law because there is no international police force, and courts lack the capacity to penalise disobedience. The sources for public international law to develop are custom, practice and treaties between sovereign nations. The United Nations, founded under the UN

Charter, is one of the most important international organisations. It was established after the Treaty of Versailles' failed to prevent the Second World War. International agreements, like the Geneva Conventions on the conduct of war, and international bodies such as the International Court of Justice, International Labour Organisation, the World Trade Organisation, or the International Monetary Fund, also form a growing part of public international law.

4. Conflict of Law

Conflict of laws (or "private international law" in civil law countries) concerns which jurisdiction a legal dispute between private parties should be heard in and which jurisdiction's law should be applied. Today, businesses are increasingly capable of shifting capital and labour supply chains across borders, as well as trading with overseas businesses. This increases the number of disputes outside a unified legal framework. Increasing numbers of businesses opt for commercial arbitration under the New York Convention 1958.

5. European Union Law

European Union law is the first and thus far only example of a supranational legal framework. However, given increasing global economic integration, many regional agreementsespecially the Union of South American Nationsare on track to follow the same model. In the EU, sovereign nations have pooled their authority through a system of courts and political institutions. They have the ability to enforce legal norms against and for member states and citizens, in a way that public international law does not. As the European Court of Justice said in 1962, European Union law constitutes "a new legal order of international law" for the mutual social and economic benefit of the member states.

Topic : A History Of Law And Justice In America

Topic Objective:

At the end of this topic student would be able to:

- Define the law and justice system in America
- Discuss about the history of law and justice in America
- Highlight the system of justice in American history

Definition/Overview:

The law of the United States: The law of the United Stateswas originally largely derived from the common law system of English law, which was in force at the time of the Revolutionary War. However, the supreme law of the land is the United States Constitution and, under the Constitution's Supremacy Clause, laws enacted by Congress and treaties to which the U.S. is a party. These form the basis for federal laws under the federal constitution in the United States, circumscribing the boundaries of the jurisdiction of federal law and the laws in the fifty U.S.states and territories.

Key Points:

1. United States Law

In the United States, the law is derived from four sources. These four sources are constitutional law, administrative law, statutory law, and the common law (which includes case law). The most important source of law is the United States Constitution. All other law falls under, and is subordinate to, that document. No law may contradict the Constitution. For example, if Congress passes a statute that conflict with the Constitution, the Supreme Court may find that law unconstitutional. Notably, a statute does not disappear automatically merely because it has been found unconstitutional; it must be deleted by a subsequent statute. Many federal and state statutes have remained on the books for decades after they were ruled to be unconstitutional. However, under the principle of stare decisis, no sensible lower court will enforce an unconstitutional statute, and any court that does so will be reversed by the Supreme Court. Also, certain practices traditionally allowed under English common law were outlawed by the Constitution, such as bills of attainder and general search warrants.

- As a society grows larger and the economy expands law and justice become more formal.
- Colonial courts served as the legislative, executive, and judicial branches of county government.
- Colonial courts were seen as tools of the Crown and mistrusted by the common people, while legislatures generally supported popular sentiment against the king.
- Colonial law was substantially codified law.
- No law schools existed in the American colonies.
- The works of Blackstone were popular in colonial America.

- The need for lawyers is related to the complexity of commerce.
- Prior to the Constitution, there was a lack of a clear separation of governmental powers.
- The use of the common law in the early United States was limited by a lack of published decisions.
- Frontier sentiments about the absence of law and justice gave rise to vigilantism and lynch law.
- Sovereign immunity generally prohibits suits by citizens against their own states.
- As a result of the Industrial Revolution, judges began using the law to fashion policy.
- The ability of the judicial branch to pronounce a statute unconstitutional is a methodological expression of natural law.
- The Constitution leaves the establishment of a federal judiciary and the size of the membership of the Supreme Court to Congress.
- The importance of the decision in Marbury v. Madison was that it established the Courts power of judicial review.
- The decision in Gibbons v. Ogden was important for the economic development of the United States.
- The Eleventh Amendment prohibits citizen suits against state government.
- The Constitution makes no direct reference to slavery.
- The purpose of the Fourteenth Amendment was to afford certain civil rights to blacks in the South.
- The Bill of Rights (the first ten amendments to the Constitution) was intended to apply only to the federal government.
- During much of the nineteenth century, judges routinely substituted their policy choices for those of legislators.
- Social Darwinism would be supportive of laissez-faire economics.
- When the Supreme Court in Youngstown Sheet and Tube Co., et al. v. Sawyer (1952) ruled that the president had acted beyond his constitutional authority, President Truman immediately ordered return of control of the steel mills to their owners.
- Brown v. Board of Education is an equity decision.
- The Supreme Courts 2005 eminent domain decision (Kelo v. City of New London) permits the seizure of private property for commercial use.

In Section 2 of this course you will cover these topics:

- Law Schools And Legal Education
- The Legal Profession And The Practice Of Law
- The Structure And Administration Of State And Federal

Topic : Law Schools And Legal Education

Topic Objective:

At the end of this topic student would be able to:

- Define legal education
- Discuss about the law schools

Definition/Overview:

Law Schools: A law school (also known as a school of law or college of law) is an institution specializing in legal education.

Key Points:

1. Law schools in Canada, Australia, and the United States typically require three years of study after completing an undergraduate degree. Programs which offer part-time study or joint-degree programs may last four or more years such as the joint BA/LL.B or BA/JD programs in Australia. Upon graduation from law school, students are awarded a professional degree, the JurisDoctor (J.D.) or Doctor of Law degree in the U.S. or the Bachelor of Laws (LL.B.; or, from the University of Toronto and Queen's University, a J.D.) in Common law Canada and Bachelor of Civil Law (B.C.L) in Civil Law Canada (Quebec) and some schools in Louisiana. While rarely obtained, the academic doctoral degree in law (equivalent to a Ph.D. in other fields) is the Doctor of Juridical Science (S.J.D.) in the U.S.or the Doctorate of Laws (LL.D.) in Canada. Some U.S. and Canadian schools also offer a Master of Laws (LL.M.) program, often targeted at training foreign lawyers in U.S. law but occasionally an academic degree for post-J.D. study focusing on a specialized field (such as tax law).

2. In addition to attending law school, in most jurisdictions a graduate of a law school is required to pass the state or provincial bar examination in order to practice law. The Multistate Bar Examination is part of the bar examination in almost all United States jurisdictions; generally, the standardized, common law subject matter of the MBE is combined with state-specific essay questions to produce a comprehensive bar examination. In the U.S., law school typically involves a full time course of study, though there are part-time programs available. In Canada, part-time study is very rare. On July 3, 2007, the Korean National Assembly passed legislation introducing 'LawSchool', heavily based on the American post-graduate system

3. Recently, in the United States, critics have emerged questioning the forthrightness of some law schools in providing prospective students with accurate facts regarding alumni job-placement and compensation rates, suggesting that certain law schools may be distorting their statistics in order to attract students to their institutions. In particular, many law school graduates--particularly at lower-ranked schools--suggest that their schools utilized correct, but misleading, statistics to attract students. An example of this would be citing the mean graduate salary, instead of the median; while the median salary of law grads in the U.S. is approximately $62,000, the mean could be inflated somewhat by a relatively small concentration of graduates earning starting salaries well above the median. Also, it is very likely that even median salary statistics are incorrect, since students who are unemployed, working temporary jobs or have a low salary are less likely to submit a salary report to the school.

4. A common response to this criticism, however, is that it simply reflects the reality of competitiveness in legal education and in the legal market. With a limited number of top positions available, prospective law students should be circumspect about the employment opportunities that will await them after graduationespecially if they plan on attending a lower-ranked school. At the same time, however, students at prestigious, highly regarded institutions often have a variety of options available. This discrepancy can be seen as a simple function of supply and demand, with the number of newer (and thus lower-ranked) law schools proliferating in recent years. A similar difficulty may be encountered by graduate students in other fields, although the aforementioned lack of accurate information about post-graduate employment may exacerbate the problem for law students.

5. Even when students are able to find jobs at the top-paying law firms, some say that minority law school graduates have difficulty advancing their careers. The law student organizationBuilding a Better Legal Profession generated controversy for showing the lack of female and minority partners in large private firms. In an October 2007 press conference reported in the Wall Street Journal and the New York Times, the group released data publicizing the numbers of African-Americans, Hispanics, and Asian-Americans atAmerica's top law firms. The group has sent the information to top law schools around the country, encouraging students to take this demographic data into account when choosing where to work after graduation. As more students choose where to work based on the firms' diversity rankings, firms face an increasing market pressure in order to attract top recruits. As well, there has been some controversy regarding the stark increases in law school tuition in recent years, at a time when compensation packages in the legal services sector are growing much more slowly than the U.S. inflation rate. Some attribute these issues to insufficient regulation of law schools by the American Bar Association. The total number of Juris Doctor degrees awarded has been on the rise in recent years, at least partially due to the accreditation of new schools by the ABA.

- Harvard originated the case method study of law.
- Until Langdell was appointed at Harvard, legal education did not require an undergraduate degree.
- Langdell considered legal education a search for the underlying principles of selected cases.
- The case method is a conservative approach to law.
- The law as science denies its political content.
- Elite law schools are part of prestigious universities.
- First-year law school courses are virtually the same at all law schools.
- Uniformity of legal education increases the predictability of the law.
- The stratification of legal education is based on the perceived prestige of law schools.
- By the device of distinguishing away a judge can avoid applying a particular precedent.

Topic : The Legal Profession And The Practice Of Law

Topic Objective:

At the end of this topic student would be able to:

- Define the legal profession
- Discuss the practice of law
- Discuss about the importance of legal profession and the issues related to it

Definition/Overview:

The Practice of Law: In its most general sense, the practice of law involves giving legal advice to clients, drafting legal documents for clients, and representing clients in legal negotiations and court proceedings such as lawsuits, and is applied to the professional services of a lawyer or attorney at law, barrister, solicitor, or civil law notary. However, there is a substantial amount of overlap between the practice of law and various other professions where clients are represented by agents. These professions include real estate, banking, accounting, and insurance. Moreover, a growing number of legal document assistants (LDAs) are offering services which have traditionally been offered only by lawyers and their employee paralegals. Many documents may now be created by computer-assisted drafting libraries, where the clients are asked a series of questions posed by the software in order to construct the legal documents.

Key Points:

1. In the United States, the practice of law is conditioned upon admission to the bar of a particular state or other territorial jurisdiction. The American Bar Association and the American Law Institute are among the organizations that are concerned with the interests of lawyers as a profession and the promulgation of uniform standards of professionalism and ethics, but regulation of the practice of law is left to the individual states."Unauthorized practice of law" (UPL) is prohibited in every state by statute, regulation, or court rules. For example, Texas law generally prohibits a person who is not an attorney from representing a client in a personal injury or property damage matter, and punishes a violation as a misdemeanor. Some states also criminalize the separate behavior of falsely claiming to be lawyer (in Texas, for example, this is a felony).

2. Interpretations of the term "unauthorized practice of law" vary among jurisdictions. For example, the use of legal document assistants (LDAs) in California is tolerated to a high degree. Many of the activities LDAs perform in Californiawould be considered the "unauthorized practice of law" if performed in New York. Most unauthorized practice of law may be unintentional. Probably the most common violators are accountants, paralegals, notaries public, and people who formerly worked for an attorney. Many times what seems to them to be "common knowledge" or "just helping out a friend" in fact crosses the line into practice of law. For instance, many accountants who represent small businesses will "fill out some forms" to create a corporation. They are drafting legal documents, which requires a law license. A notary public who reads instructions, asks questions, and tells a person which forms to use and how to fill them out may be giving legal advice. Buying a legal form in a store and helping a friend fill it out involves giving legal advice and drafting legal documents.

3. In most states, unauthorized practice of law is a criminal offense. However, while there are cases of individuals being prosecuted for the unauthorized practice of law, absent fraud, theft, or serious violations of consumer protection laws, common practice is simply to explain to the person that the questioned activities constituted unauthorized practice of law and get an agreement that the person will desist.

- The case method provided justification for a monopoly of legal practice.
- The bar associations movement to limit entry into the practice of law was aided by the rise of the case method in legal education.
- An integrated bar is similar to a closed shop in labor-management relations.
- The Cravath system helps to prepare law students to pass the bar examination.
- Attorneys with the highest income are often found in Stratum III.

Topic : The Structure And Administration Of State And Federal

Topic Objective:

At the end of this topic student would be able to:

- Define the structure and administration of State and Federal
- Discuss about the structure and administration of State and Federal

Definition/Overview:

The Structure and Administration of State and Federal: The federal government of the United Statesis the centralized United States governmental body established by the United States Constitution. The federal government has three branches: the legislature, executive, and judiciary. Through a system of separation of powers or "checks and balances", each of these branches has some authority to act on its own, some authority to regulate the other two branches, and has some of its own authority, in turn, regulated by the other branches. The policies of the federal government have a broad impact on both the domestic and foreign affairs of the United States. In addition, the powers of the federal government as a whole are limited by the Constitution, which leaves a great deal of authority to the individual states.

Key Points:

1. The United States Congress is the legislative branch of the federal government. It is bicameral, comprising the House of Representatives and the Senate. The House of Representatives consists of 435 members, each of whom represents a congressional district and serves for a two-year term. House seats are apportioned among the states by population; in contrast, each state has two Senators, regardless of population. There are a total of 100 senators (as there are currently 50 states), who serve six-year terms (one third of the Senate stands for election every two years). Each congressional chamber (House or Senate) has particular exclusive powersthe Senate must give "advice and consent" to many important Presidential appointments, and the House must introduce any bills for the purpose of raising revenue. However, the consent of both chambers is required to make any law. The powers of Congress are limited to those enumerated in the Constitution; all other powers are reserved to the states and the people. The Constitution also includes the "necessary-and-proper clause", which grants Congress the power to "make all laws which

shall be necessary and proper for carrying into execution the foregoing powers." Members of the House and Senate are elected by first-past-the-post voting in every state except Louisianaand Washington, which have runoffs.

2. The Constitution does not specifically call for the establishment of Congressional committees. As the nation grew, however, so did the need for investigating pending legislation more thoroughly. The 108th Congress (2003-2005) had 19 standing committees in the House and 17 in the Senate, plus four joint permanent committees with members from both houses overseeing the Library of Congress, printing, taxation, and the economy. In addition, each house can name special, or select, committees to study specific problems. Because of an increase in workload, the standing committees have also spawned some 150 subcommittees.

3. The Constitution grants numerous powers to Congress. These include the powers: to levy and collect taxes in order to pay debts, provide for common defense and general welfare of the U.S.; to borrow money on the credit of the U.S.; to regulate commerce with other nations and between the states; to establish a uniform rule of naturalization; to coin money and regulate its value; provide for punishment for counterfeiting; establish post offices and roads, promote progress of science, create courts inferior to the Supreme Court, define and punish piracies and felonies, declare war, raise and support armies, provide and maintain a navy, make rules for the regulation of land and naval forces, provide for, arm, and discipline the militia, exercise exclusive legislation in Washington D.C, and make laws necessary and proper to execute the powers of Congress.

- The trial court has responsibility for settling the issue at hand and need not interest itself in wider issues such as the precedential value of its decisions.
- Jurisdiction can refer to venue, subject matter, and persons over which a court can exercise authority.
- In only one case is the jurisdiction of a court established by the U.S. Constitution.
- Courts created by Congress under Article I of the Constitution (legislative courts) perform functions that are nonjudicial
- Venue is the area of geographic jurisdiction of a court.
- Diversity jurisdiction means a litigant may choose either the state or federal courts.
- Federal courts, but not state courts, have jurisdiction over cases involving patents, copyrights, customs, and bankruptcy.

- State courts share jurisdiction with federal courts in cases involving the U.S. Constitution.
- Legislative (Article I) courts in the federal system often perform functions that are nonjudicial.
- The certiorari jurisdiction of the U.S. Supreme Court means that it determines which cases it will consider.
- The Supreme Court is immune from charges of employment discrimination.
- The Supreme Court will not consider a case presented in a friendly, nonadversarial proceeding.
- Structural unification includes consolidating and simplifying existing trial courts and forming a single superior court on a countywide basis.
- Major reform in criminal court has been based on the Constitution's guarantee of the right to a speedy trial.

In Section 3 of this course you will cover these topics:

- The Appellate Process And Judicial Review
- Judicial Interpretation And Policy-Making
- Judges, Prosecutors, And Criminal Defense Attorneys

Topic : The Appellate Process And Judicial Review

Topic Objective:

At the end of this topic student would be able to:

- Define Judicial Review and the Appellate process
- Discuss the process of Appellate and the judicial review process

Definition/Overview:

Judicial review: Judicial review is the power of a court to review the actions of public sector bodies in terms of their lawfulness, or to review the constitutionality of a statute or treaty, or

to review an administrative regulation for consistency with a statute, a treaty, or the Constitution itself.

Appellate Process: In law, an appeal is a process for requesting a formal change to an official decision. The specific procedures for appealing, including even whether there is a right of appeal from a particular type of decision, can vary greatly from country to country. Even within a jurisdiction, the nature of an appeal can vary greatly depending on the type of case.

Key Points:

1. At the federal level, there is no judicial review explicit in the United States Constitution, but the doctrine has been inferred from that document. 5 of the 13 states at the time of 1787's Constitutional Convention had some form of "judicial review" or "judicial veto" in their state Constitutions. Delegates at 1787's Constitutional Convention, including South Carolina's Charles Pinckney, spoke out against the doctrine of judicial review. The Constitution states in Article III that: The judicial power of the United States, shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish....The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority....In all cases affecting ambassadors, other public ministers and consuls, and those in which a state shall be party, the Supreme Court shall have original jurisdiction. In all the other cases before mentioned, the Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations as the Congress shall make.

2. Ever since the case of Marbury v. Madison, the Supreme Court has understood that it has a power of judicial review, in order to apply the Constitution to particular cases. This does not mean, however, that the judiciary decides the meaning of the text of the Constitution. Article VI requires all public officials in the other branches of government to be bound "by oath or affirmation, to support this Constitution," and the officials of the other branches of government have almost always respected the Court's interpretations, even when disagreeing with them, on the premise that the Court's interpretations of the Constitution have been in good faith. The procedure for judicial review of federal administrative regulation in the United Statesis set forth by the Administrative Procedure

Act although the courts have ruled such as in Bivens v. Six Unknown Named Agents that a person may bring a case on the grounds of implied cause of action when no statutory procedure exists.

- When considering a case, appellate courts never permit new testimony.
- Appellate courts do not permit the witnesses to testify.
- Except when the Supreme Court interprets the Constitution, its jurisdiction is subject to congressional modification.
- The Supreme Court will not consider cases presented in a friendly, non-adversarial manner.
- The Supreme Court deliberates in secrecy.

3. Although the power to strike down laws is not specifically listed in the Constitution, it has been deemed an implied power, derived from Article III quoted above, and from Article VI which declares that the Constitution is the supreme law of the land "and the Judges of every state shall be bound thereby". No state or federal law is allowed to violate the U.S. Constitution. The foremost authority for deciding the constitutionality of federal or state law under the Constitution of the United Statesin cases which come before it is the Supreme Court of the United States, as decided in the 1803 case of Marbury v. Madison. In Marbury the Supreme Court struck down a portion of the Judiciary Act of 1789 which had purported to change the Court's original jurisdiction from what the Constitution described. Although the Court continues to review the constitutionality of statutes in cases which come before it, Congress and the states retain power to influence what cases come before the Court. For example, the Constitution (at Article III, Section 2) gives Congress power to make exceptions to the Supreme Court's appellate jurisdiction, and additionally states may choose to exercise sovereign immunity from lawsuits.

4. The ultimate court for deciding the constitutionality of state law under state constitutions is normally the highest state appellate court, whose judgments are final in the absence of a federal question. This court is usually called a state supreme court, but sometimes is known as a court of appeals. Even before Marbury, the doctrine of judicial review was specifically enshrined in some state constitutions, and by 1803 it had been employed in both state courts and federal courts in actions dealing with state statutes. In the federal system, courts may only decide actual cases or controversies; it is not possible to request the federal courts to review a law without at least one party having legal standing to engage in a lawsuit. This principle means that courts sometimes do not exercise their

power of review, even when a law is seemingly unconstitutional, for want of jurisdiction. In some state courts, such as the Massachusetts Supreme Judicial Court, legislation may be referred in certain circumstances by the legislature or by the executive for an advisory ruling on its constitutionality prior to its enactment (or enforcement).

5. The U.S. Supreme Court seeks to avoid reviewing the Constitutionality of an act where the case before it could be decided on other grounds. Justice Brandeis framed it thus: The Court developed, for its own governance in the cases confessedly within its jurisdiction, a series of rules under which it has avoided passing upon a large part of all the constitutional questions pressed upon it for decision.: They are:

- The Court will not pass upon the constitutionality of legislation in a friendly, non-adversary, proceeding, declining because to decide such questions is legitimate only in the last resort, and as a necessity in the determination of real, earnest, and vital controversy between individuals. It never was the thought that, by means of a friendly suit, a party beaten in the legislature could transfer to the courts an inquiry as to the constitutionality of the legislative act.
- The Court will not anticipate a question of constitutional law in advance of the necessity of deciding it. It is not the habit of the court to decide questions of a constitutional nature unless absolutely necessary to a decision of the case.
- The Court will not formulate a rule of constitutional law broader than is required by the precise facts to which it is to be applied.
- The Court will not pass upon a constitutional question although properly presented by the record, if there is also present some other ground upon which the case may be disposed of If a case can be decided on either of two grounds, one involving a constitutional question, the other a question of statutory construction or general law, the Court will decide only the latter.
- The Court will not pass upon the validity of a statute upon complaint of one who fails to show that he is injured by its operation.
- The Court will not pass upon the constitutionality of a statute at the instance of one who has availed himself of its benefits.
- When the validity of an act of the Congress is drawn in question, and even if a serious doubt of constitutionality is raised, it is a cardinal principle that this Court will first ascertain whether a construction of the statute is fairly possible by which the question may be avoided. After the Court exercised its power of judicial review in the 1803 case of Marbury v.

Madison, it avoided striking down a federal statute during the subsequent fifty years, and would not do so again until the 1856 case of Dred Scott v. Sandford.

Topic : Judicial Interpretation And Policy-Making

Topic Objective:

At the end of this topic student would be able to:

- Define judicial interpretation
- Discuss the process of policy making

Definition/Overview:

Judicial interpretation: Judicial interpretation is a theory or mode of thought that explains how the judiciary should interpret the law, particularly constitutional documents and legislation. An interpretation which results in or supports some form of law-making role for the judiciary in interpreting the law is sometimes pejoratively characterized as judicial activism, the opposite of which is judicial lethargy, with judicial restraint somewhere in between.

Key Points:

1. Throughout the history of the United States, courts have used a wide variety of theories of judicial interpretation to construe the Constitution of the United States, including textualism, originalism, strict constructionism, functionalism, doctrinalism, developmentalism, contextualism (historical or facial), structuralism, or even a combination of several of these schools of thought. As examples, some jurists have interpreted the Constitution based on their philosophical outlook that the Constitution is a **"Living Constitution,"** while others have interpreted it as "**The Moral Constitution".**

2. Theoriginalist approach aspires to interpret constitutional text in light of original intentions or understandings of the founding fathers who wrote the Constitution. Advocates of originalismare centrally concerned with discovering the subjective intentions of the figures that wrote or framed particular constitutional provisions. They tend to focus on the

original public meaning or understanding of a constitutional provision for the generation that ratified or amended that provision. Originalism, of course, has its own liabilities, including determining what counts as evidence of intent, whose intent counts, and whether the promulgated intent should be abstract or concrete.

3. Accordingly, one common criticism of originalism is that an originalist, while claiming to interpret a provision based on the original intent behind it, actually will pick and choose from a variety of sources to meet the meaning he or she wishes to give it. Originalismdiffers from Textualism in that it looks to the subjective intent of the lawmaker, instead of looking to the objective meaning of the language as understood (by any reasonably well-educated third party) at the time of its enactment.

- The judicial branch must get involved in policy-making because of the complex structure of our system of government.
- States are immune from damage suits under the Eleventh Amendment.
- Strict constructionists argue that decisions must be in accord with what was intended by the framers of the Constitution.
- The judicial branch is dependent on the executive branch for the implementation of its decisions.
- Legislative intent provides a basis for interpreting statutes.
- Since the Civil War, the judicial branch has not involved itself in foreign policy.

Topic : Judges, Prosecutors, And Criminal Defense Attorneys

Topic Objective:

At the end of this topic student would be able to:

- Define prosecutor and the process of prosecution
- Discuss about the criminal defense attorneys

Definition/Overview:

Prosecutor: The prosecutor is the chief legal representative of the prosecution in countries with either the common law adversarial system or the civil law inquisitorial system. The

prosecution is the legal party responsible for presenting the case against an individual suspected of breaking the law in a criminal trial.

Judge: A 'judge' or justice is an official who presides over a court. The powers, functions, method of appointment, discipline, and training of judges vary widely across different jurisdictions.

Key Points:

1. **Prosecutors** are typically lawyers who possess a law degree and are recognized as legal professionals by the court in which they intend to represent the state (that is, they have been admitted to the bar). They usually only become involved in a criminal case once charges need to be laid. They are typically employed by an office of the government with safeguards in place to ensure such an office can successfully pursue the prosecution of government officials. Often multiple offices exist in a single country due to the various legal jurisdictions that exist. Being backed by the power of the state, prosecutors are usually subject to special professional responsibility rules in addition to those binding all lawyers. For example, in the United States, Rule 3.8 of the ABA Model Rules of Professional Conduct requires prosecutors to "**make timely disclosure to the defense of all evidence or information ... that tends to negate the guilt of the accused or mitigates the offense.**"

2. A**lawyer** specializing in the defense of individuals and companies charged with criminal conduct. In the United States, criminal defense lawyers deal small with the international problems surrounding the apprehension, searches of client or property not arrest until noted guilty of his or her client (4th Amendment), as well as any statements the client may have made (5th Amendment). Criminal defense lawyers also deal with the personality of the crimes his or her clients are charged with. In the United Statescriminal defendants are entitled to the presumption of innocence until prosecutors prove each essential element of a crime beyond a reasonable doubt. Serious crimes in the United States are tried to juries of twelve people and the jury must be unanimous in its verdict to either convict or acquit the defendant. A split in the jury is often called a **"hung jury"** and may result in a retrial of the defendant. Criminal defense lawyers actively pursue their client's cause through all stages of a criminal prosecution.

3. Many**criminal defense lawyers** in the United Statesare employed by governmental entities (States, Counties, etc) and are often referred to as **"Public Defenders."** Often Public Defenders are fresh law school graduates seeking to gain quick courtroom experience, but there are many older, extremely well experienced lawyers who have made public defending a lifetime advocation. There are also private defense lawyers who are retained by individual clients on a case by case basis. Criminal defense work can be intimidating to some lawyers as the specter of a client going to jail for long periods of time or even being subjected to capital punishment looms over some defendants. Because of this and other factors, criminal defense lawyers tend to be a special breed of lawyers.

4. There are significant differences between the role of a judge in the common law system descended from British practice, and civil law systems descended from continental European judicial practice. The descriptions below are necessarily archetypical. Details vary from judicial system to judicial system. In many cases, the judicial systems have experienced convergent evolution, expressly or unconsciously adopting similar practices or operating in a manner that minimizes the impact of formal differences between the archetypical role of each system's judges. For example, while common law judicial procedure generally contemplates a single evidentiary trial, many cases are actually resolved through testimony taken from witnesses in isolated depositions prior to trial that support written presentations to a judge. Similarly, while civil law judges must have some statutory point of departure for their legal rulings, there are accepted methods of legal reasoning that often afford them greater latitude to fit the law to the circumstances of an unusual case than a stark statement of the underlying principles of the system would suggest. This can serve a purpose similar to the common law method of legal reasoning known as stare decisis.

- In the United States, a judge has no interest in the outcome of a case before him or her.
- When carrying out official responsibilities, a judge has total immunity from any legal action resulting from his or her decisions.
- Judges in the United States receive no formal training before they assume their positions.
- Senatorial courtesy empowers a senator to control certain presidential appointments.
- U.S. attorneys are appointed by the president.
- The solicitor general represents the United States before the Supreme Court.
- Horizontal prosecution is more cost effective than vertical prosecution.

- Vertical prosecution is a more victim-friendly method.
- Early screening of criminal cases by the prosecutor's office can reduce the need for plea bargaining.
- Private counsel may be assigned by a judge to represent an indigent defendant because the public defender's office is representing a codefendant.
- Relatively few attorneys practice private criminal defense law.
- Clients usually resent the public defender.

In Section 4 of this course you will cover these topics:

- Criminal Justice
- Negotiated Justice: Plea Bargaining
- Civil Justice

Topic : Criminal Justice

Topic Objective:

At the end of this topic student would be able to:

- Define criminal justice
- Discuss the system of practices and organizations

Definition/Overview:

Criminal justice: Criminal justice is the system of practices, and organizations, used by national and local governments, directed at maintaining social control, deter and controlling crime, and sanctioning those who violate laws with criminal penalties. The primary agencies charged with these responsibilities are law enforcement (police and prosecutors), courts, defense attorneys and local jails and prisons which administer the procedures for arrest, charging, adjudication and punishment of those found guilty. When processing the accused through the criminal justice system, government must keep within the framework of laws that protect individual rights. The pursuit of criminal justice is, like all forms of "justice,"

"fairness" or "process," essentially the pursuit of an ideal. Throughout history, criminal justice has taken on many different forms which often reflect the cultural mores of society.

Key Points:

1. In the United States, criminal justice policy has been guided by the 1967 President's Commission on Law Enforcement and Administration of Justice, which issued a ground-breaking report **"The Challenge of Crime in a Free Society."** This report made more than 200 recommendations as part of a comprehensive approach toward the prevention and fighting of crime. Some of those recommendations found their way into the Omnibus Crime Control and Safe Streets Act of 1968. The Commission advocated a **"systems"** approach to criminal justice, with improved coordination among law enforcement, courts, and correctional agencies. The President's Commission defined the criminal justice system as the means for society to **"enforce the standards of conduct necessary to protect individuals and the community."**

2. The criminal justice system in Englandand Walesaims to **"reduce crime by bringing more offences to justice, and to raise public confidence that the system is fair and will deliver for the law-abiding citizen."** In Canada, the criminal justice system aims to balance the goals of crime control and prevention, and justice (equity, fairness, protection of individual rights). InSweden, the overarching goal for the criminal justice system is to reduce crime and increase the security of the people

3. Law is a system of rules usually enforced through a set of institutions. The purpose of law is to provide an objective set of rules for governing conduct and maintaining order in a society. The oldest known codified law is the Code of Hammurabi, which was established circa 1760 BC in ancient Mesopotamia. Throughout history laws have been handed down by many different organizations. In ancient Romefor example, laws had to be voted on by a Senate before taking effect. Throughout the Dark and Middle Ages laws were often created or abolished according to the whim of the ruling nobility. In different parts of the world, law could be established by philosophers or religion. In the modern world, laws are typically created and enforced by governments. These codified laws may coexist with or contradict other forms of social control, such as religious proscriptions, professional rules and ethics, or the cultural mores and customs of a society.

4. Within the realm of codified law, there are generally two forms of law that the courts are concerned with. Civil laws are rules and regulations which govern transactions and grievances between individual citizens. Criminal law is concerned with actions which are dangerous or harmful to society as a whole, in which prosecution is pursued not by an individual but rather by the state. The purpose of criminal law is to provide the specific definition of what constitutes a crime and to prescribe punishments for committing such a crime. No criminal law can be valid unless it includes both of these factors. The subject of criminal justice is, of course, primarily concerned with the enforcement of criminal law.

5. The courts serve as the venue where in disputes are then settled and justice is administered. With regard to criminal justice, there are a number of critical people in any court setting. These include the judge, prosecutor, and the defense attorney. The judge, or magistrate, is a person who should be knowledgeable in the law, and whose function is to objectively administer the legal proceedings and offer a final decision to dispose of a case. In America and a growing number of nations, guilt or innocence is decided through the adversarial system. In this system, two parties will both offer their version of events and argue their case before the court (sometimes before a judge or panel of judges, sometimes before a jury). The case should be decided in favor of the party offers the most sound and compelling argument based on the law as applied to the facts of the case.

6. The prosecutor is the lawyer who brings charges against an individual or corporation. It is the prosecutor's duty to explain to the court what crime was committed and to detail what evidence has been found which incriminates the accused. The prosecutor should not be confused with a plaintiff or plaintiff's counsel. Although both serve the function of bringing a complaint before the court, the prosecutor is a servant of the state who makes accusations on behalf of the state in criminal proceedings, while the plaintiff is the complaining party in civil proceedings.

- The administration of criminal justice in the United States reflects the highly decentralized nature of our governmental structure.
- Courts never have jurisdiction in criminal cases unless there is a statute specifically making the defendants acts a crime.
- An affirmative defense refers to a claim of self-defense or entrapment.
- The amount of due process required in a particular setting is dependent upon what is at stake.

- The Crime Control model stresses achieving the greatest amount of societal security and safety.
- The Supreme Court has ruled that a suspects Miranda rights are not violated when the police mislead his attorney.
- The exclusionary rule can only be invoked by the defense.
- Based on Terry v. Ohio (1968), the police are allowed to frisk suspects without making an arrest.
- The lower courts are said to dispense rough justice because of the large volume of cases entering this part of the system.
- The Constitution requires that all criminal defendants be indicted by a grand jury before being prosecuted for a felony in federal court.
- Most due process rights typically enjoyed by a criminal defendant are not relevant to grand jury proceedings.
- A probable cause hearing reviews the sufficiency of evidence used by the police officer to justify an arrest.
- A plea of nolo contendere avoids a trial.
- Circumstantial evidence is often more reliable than direct evidence.
- Cross-examination is used to challenge a witness testimony.

Topic : Negotiated Justice: Plea Bargaining

Topic Objective:

At the end of this topic student would be able to:

- Define the term negotiated justice
- Discuss about the plea bargaining

Definition/Overview:

Plea Bargain: A plea bargain (also plea agreement, plea deal or copping a plea) is an agreement in a criminal case whereby the prosecutor offers the defendant the opportunity to plead guilty, usually to a lesser charge or to the original criminal charge with a recommendation of a lighter than the maximum sentence.

Key Points:

1. Most criminal defendants are offered plea bargain. A plea bargain gives criminal defendants the opportunity to avoid sitting through a trial risking conviction on the original more serious charge. For example, a criminal defendant charged with a felony theft charge, the conviction of which would require imprisonment in state prison, may be offered the opportunity to plead guilty to a misdemeanor theft charge, which may not carry jail time. In cases such as a car accident when there is a potential for civil liability against the defendant, the defendant may agree to plead no contest or **"guilty with a civil reservation,"** which essentially is a guilty plea without admitting civil liability. The United States Supreme Court has recognized plea bargaining as both an essential and desirable part of the criminal justice system. The benefits of plea-bargaining are obvious: the relief of court congestion, alleviation of the risks and uncertainties of trial, and its information gathering value.

2. Plea bargaining is a significant part of the criminal justice system in the United States; the vast majority of criminal cases in the United Statesare settled by plea bargain rather than by a jury trial. Plea bargains are subject to the approval of the court, and different States and jurisdictions have different rules. The Federal Sentencing Guidelines are followed in federal cases and have been created to ensure a standard of uniformity in all cases decided in the federal courts.

3. Plea bargaining is extremely difficult in jurisdictions based on civil law. This is because unlike common law systems, civil law systems have no concept of plea if the defendant confesses, that confession is entered into evidence, but the prosecution is not absolved of the duty to present a full case. A court may decide that a defendant is innocent even though he presented a full confession. Also unlike common law systems, prosecutors in civil law countries may have limited or no power to drop or reduce charges after a case has been filed, and in some countries their power to drop or reduce charges before a case has been filed is limited, making plea bargaining impossible. Furthermore, many civil law jurists consider the concept of plea bargaining to be abhorrent, seeing it as reducing justice to barter.

4. Some legal scholars argue that plea bargaining is unconstitutional because it takes away a person's right to a trial by jury. In fact, Justice Hugo Black once noted that, in America,

the defendant has an absolute, unqualified right to compel the State to investigate its own case, find its own witnesses, prove its own facts, and convince the jury through its own resources. Throughout the process, the defendant has a fundamental right to remain silent, in effect challenging the State at every point to Prove it! By limiting the powers of the police and prosecutors, the Bill of Rights safeguards freedom.

5. Plea bargaining is also criticized, particularly outside the United States, on the grounds that its close relationship with rewards, threats and coercion potentially endangers the correct legal outcome. Coercive plea bargaining has been criticized on the grounds that it infringes an individual's rights under Article 8 of the UK's Human Rights Act 1998. The theoretical work based on the Prisoner's dilemma is one reason why, in many countries, plea bargaining is forbidden. Often, precisely the Prisoner's dilemma scenario applies: it is in the interest of both suspects to confess and testify against the other suspect, irrespective of the innocence of the accused. Arguably, the worst case is when only one party is guilty here, the innocent one is unlikely to confess, while the guilty one is likely to confess and testify against the innocent.

- Differences in funding between the police and judicial systems help to explain plea bargaining.
- Due process is ensured through the adversarial method.
- According to critics, defense attorneys abandon their adversarial role in favor of being a broker.
- Vertical overcharging means charging a single offense at a higher level than the circumstances in the case would appear to support.
- In the absence of a trial, the adversarial model can occur in private settings such as the judges chambers.
- The longer a case takes, the greater the likelihood of an outcome in favor of the defendant.
- The role of the judge in plea bargaining often depends on the type of sentencing system used.
- Front-loading of cases is a method for avoiding efforts at limiting or abolishing plea bargaining.

Topic : Civil Justice

Topic Objective:

At the end of this topic student would be able to:

- Define civil justice
- Describe Civil law in relation to criminal law

Definition/Overview:

Civil law: Civil law, as opposed to criminal law, refers to that branch of law dealing with disputes between individuals and/or organizations, in which compensation may be awarded to the victim. For instance, if a car crash victim claims damages against the driver for loss or injury sustained in an accident, this will be a civil law case

Key Points:

1. In the common law, civil law refers to the area of laws, which through incorporation, take on the legal status of individuals. Civil law, in this sense, is usually referred to in comparison to criminal law, which is that body of law involving the state against individuals (including incorporated organizations) where the state relies on the power given it by statutory law. Civil law may also be compared to military law, administrative law and constitutional law (the laws governing the political and law making process), and international law. Where there are legal options for causes of action by individuals within any of these areas of law, it is thereby civil law.

2. Civil law courts provide a forum for deciding disputes involving torts (such as accidents, negligence, and libel), contract disputes, the probate of wills, trusts, property disputes, administrative law, commercial law, and any other private matters that involve private parties and organizations including government departments. An action by an individual (or legal equivalent) against the attorney general is a civil matter, but when the state, being represented by the prosecutor for the attorney general, or some other agent for the state, takes action against an individual (or legal equivalent including a government department), this is public law, not civil law.

3. The objectives of civil law is different from other types of law. In civil law there is the attempt to right a wrong, honor an agreement, or settle a dispute. If there is a victim, they get compensation, and the person who is the cause of the wrong pays, this being a civilized form of, or legal alternative to, revenge. If it is an equity matter, there is often a pie for division and it gets allocated by a process of civil law, possibly invoking the doctrines of equity. In public law the objective is usually deterrence, and retribution. The victim, or people secondarily harmed by the wrong, do not get compensated, except with that vague notion called 'closure', and there is no pie for division.

4. An action in criminal law does not necessarily preclude an action in civil law in common law countries, and may provide a mechanism for compensation to the victims of crime. Such a situation occurred when O.J. Simpson was ordered to pay damages for wrongful death after being acquitted of the criminal charge of murder. Civil law in common law countries usually refers to both common law and the law of equity, which while now merged in administration, have different traditions, and have historically operated to different doctrines, although this dualism is increasingly being set aside so there is one coherent body of law rationalized around common principles of law.

- As opposed to a criminal prosecution, a lawsuit is motivated by self-interest.
- Res judicata, similar to the prohibition against double jeopardy, is applicable in a civil case.
- In a civil case there is no right to remain silent.
- A case that is ex delicto refers to a tort.
- Government has no legal obligation to provide an attorney to an indigent party involved in a civil action.
- A judgment rendered by a state court is enforceable in all states.
- Depositions are an out-of-court procedure.
- In a civil case, the litigants have primary responsibility for control of the case.
- The Supreme Court has approved of civil juries with less than twelve members.
- In a civil case, the trial judge can order a new trial when he or she believes the verdict goes against the clear weight of the evidence.
- Noncriminal defendants have no Fifth Amendment protection against extensive requests for information.
- A moot case usually begins with a real dispute.

- A class action lawsuit is brought by one plaintiff or a small number of persons on behalf of a larger number of persons.
- Fear of social unrest led to the expansion of legal aid societies.
- Legal aid societies typically accept cases too petty for any private attorney.
- Public interest lawyers typically seek to use the legal system to redress social and economic injustices.

In Section 5 of this course you will cover these topics:

- Juvenile Justice
- Alternative Dispute Resolution, Therapeutic Jurisprudence, And Restorative Justice

Topic : Juvenile Justice

Topic Objective:

At the end of this topic student would be able to:

- Define Juvenile Justice
- Describe the term criminology in relation to juvenile crimes

Definition/Overview:

Juvenile delinquency: Juvenile delinquency refers to criminal acts performed by juveniles. Most legal systems prescribe specific procedures for dealing with juveniles, such as juvenile detention centers. There are a multitude of different theories on the causes of crime, most if not all of which can be applied to the causes of youth crime.

Key Points:

1. Youth crime is an aspect of crime which receives great attention from the news media and politicians. Crime committed by young people has risen since the mid-twentieth century, as have most types of crime. The level and types of youth crime can be used by commentators as an indicator of the general state of morality and law and order in a country, and consequently youth crime can be the source of moral panics Theories on the causes of youth crime can be viewed as particularly important within criminology. This is

firstly because crime is committed disproportionately by those aged between fifteen and twenty-five. Secondly, by definition any theories on the causes of crime will focus on youth crime, as adult criminals will have likely started offending when they were young. A Juvenile Delinquent is one who repeatedly commits crime, however these juvenile delinquents could most likely have mental disorders/behavioral issues such as schizophrenia, post traumatic stress disorder or bipolar disorder. It has been stipulated that the term 'Juvenile Delinquent' is actually a contradiction in terms. This idea is used early on in Robert Heinlein's science fiction novel Starship Troopers

- Children had virtually no legal rights in colonial America.
- Until 1967, virtually none of the Bill of Rights applied to children.
- Classical criminology stresses that causes of crime lie within the individual offender, rather than in their external environment. For classicists, offenders are motivated by rational self-interest, and the importance of free will and personal responsibility is emphasised.

Rational choice theory is the clearest example of this approach. It states that people weigh the pros and cons of committing a crime, and offend when the former outweigh the latter. A central deficiency of rational choice theory is that while it may explain when and where people commit crime, it cant explain very well why people choose to commit crimes in the first place. Neither can it explain differences between individuals and groups in their propensity to commit crimes. James Q. Wilson said the conscience and self-control of a potential young offender must be taken into account, and that these attributes are formed by parental and societal conditioning. Rational choice does not explain why crime should be committed disproportionately by young people, males, city dwellers, and the poor. (Walklate: 2003 p.2) It also ignores the influence a young persons peers can have on them, and the fact that some youths may be less able to accurately foresee the consequences of their actions than others. Rational choice theory does not take into account the proven correlations between certain social circumstances and individuals personalities, and the propensity to commit crime.

Current positivist approaches generally focus on the cultural and socio-economic environment to which a young person has been exposed, and how these conditions may be criminogenic. These theories de-emphasise individual agency, and stress criminal behaviour is largely determined by factors outside a young person's control. Social ecology or social disorganisationtheory says crime is generated by the breakdown of

traditional values and norms. This was most likely to occur in urban areas with transient populations and high levels of migration, which would produce the breakdown of family relationships and community, competing values, and increasing impersonality.

Strain Theory is associated mainly with the work of Robert Merton. He felt that there are institutionalized paths to success in society. Strain theory holds that crime is caused by the difficulty those in poverty have in achieving socially valued goals by legitimate means. As those with, for instance, poor educational attainment have difficulty achieving wealth and status by securing well paid employment, they are more likely to use criminal means to obtain these goals. Merton's suggests five adaptations to this dilemma:

- **Innovation:** individuals who accept socially approved goals, but not necessarily the socially approved means.
- **Retreatism:** those who reject socially approved goals and the means for acquiring them.
- **Ritualism:** those who buy into a system of socially approved means, but lose sight of the goals. Merton believed that drug users are in this category.
- **Conformity:** those who conform to the system's means and goals.
- **Rebellion:** people who negate socially approved goals and means by creating a new system of acceptable goals and means.

A difficulty with strain theory is that it does not explore why children of low-income families would have poor educational attainment in the first place. More importantly is the fact that much youth crime does not have an economic motivation. Strain theory fails to explain violent crime, the type of youth crime which causes most anxiety to the public.

Topic : Alternative Dispute Resolution, Therapeutic Jurisprudence, And Restorative Justice

Topic Objective:

At the end of this topic student would be able to:

- Define the term alternative dispute resolution
- Describe therapeutic jurisprudence

- Discuss about restorative justice

Definition/Overview:

Alternative dispute resolution (ADR): Alternative dispute resolution (ADR) includes dispute resolution processes and techniques that fall outside of the government judicial process. Despite historic resistance to ADR by both parties and their advocates, ADR has gained widespread acceptance among both the general public and the legal profession in recent years. In fact, some courts now require some parties to resort to ADR of some type, usually mediation, before permitting the parties' cases to be tried. The rising popularity of ADR can be explained by the increasing caseload of traditional courts, the perception that ADR imposes fewer costs than litigation, a preference for confidentiality, and the desire of some parties to have greater control over the selection of the individual or individuals who will decide their dispute.

Restorative Justice: Restorative Justice is commonly known as a theory of criminal justice that focuses on crime as an act against another individual or community rather than the state. The victim plays a major role in the process and may receive some type of restitution from the offender. Today, however,

Key Points:

1. ADR is generally classified into at least four subtypes: negotiation, mediation, collaborative law, and arbitration. (Sometimes a fifth type, conciliation, is included as well, but for present purposes it can be regarded as a form of mediation. The salient features of each type are as follows:

- **In negotiation,** participation is voluntary and there is no third party who facilitates the resolution process or imposes a resolution.
- **In mediation,** there is a third party, a mediator, who facilitates the resolution process (and may even suggest a resolution, typically known as a "mediator's proposal"), but does not impose a resolution on the parties. In some countries (for example, the United Kingdom), ADR is synonymous with what is generally referred to as mediation in other countries.
- **In collaborative** law or collaborative divorce, each party has an attorney who facilitates the resolution process within specifically contracted terms. The parties reach agreement with

support of the attorneys (who are trained in the process) and mutually-agreed experts. No one imposes a resolution on the parties.

- **In arbitration,** participation is typically voluntary, and there is a third party who, as a private judge, imposes a resolution. Arbitrations often occur because parties to contracts agree that any future dispute concerning the agreement will be resolved by arbitration. This is known as a 'Scott Avery Clause'. In recent years, the enforceability of arbitration clauses, particularly in the context of consumer agreements (e.g., credit card agreements), has drawn scrutiny from courts. Although parties may appeal arbitration outcomes to courts, such appeals face an exacting standard of review.

2. Beyond the basic types of alternative dispute resolutions there are other different forms of ADR: - Case evaluation: a non-binding process in which parties present the facts and the issues to a neutral case evaluator who advises the parties on the strengths and weaknesses of their respective positions, and assesses how the dispute is likely to be decided by a jury or other adjudicator. - Early neutral evaluation: a process that takes place soon after a case has been filed in court. The case is referred to an expert who is asked to provide a balanced and neutral evaluation of the dispute. The evaluation of the expert can assist the parties in assessing their case and may influence them towards a settlement. - Family group conference: a meeting between members of a family and members of their extended related group. At this meeting the family becomes involved in making a plan to stop the abuse or other ill-treatment between its members. -Neutral fact-finding: a process where a neutral third party, selected either by the disputing parties or by the court, investigates an issue and reports or testifies in court. The neutral fact-finding process is particularly useful for resolving complex scientific and factual disputes. - Ombuds: third party selected by an institution for example a university, hospital to investigate complaints by employees, clients or constituents. The ombuds works within the institution to investigate the complaints independently and impartially.

3. "Alternative" dispute resolution is usually considered to be alternative to litigation. It also can be used as a colloquialism for allowing a dispute to drop or as an alternative to violence. ADR - can increasingly be conducted online or by using technology. This branch of dispute resolution is known as online dispute resolution (ODR). It should be noted, however, that ODR services can be provided by government entities, and as such may form part of the litigation process. Moreover, they can be provided on a global scale,

where no effective domestic remedies are available to disputing parties, as in the case of the UDRP and domain name disputes. In this respect, ODR might not satisfy the "alternative" element of ADR.

4. "Restorative justice is a broad term which encompasses a growing social movement to institutionalize peaceful approaches to harm, problem-solving and violations of legal and human rights. These range from international peacemaking tribunals such as the South Africa Truth and Reconciliation Commission to innovations within the criminal justice system, schools, social services and communities. Rather than privileging the law, professionals and the state, restorative resolutions engage those who are harmed, wrongdoers and their affected communities in search of solutions that promote repair, reconciliation and the rebuilding of relationships. Restorative justice seeks to build partnerships to reestablish mutual responsibility for constructive responses to wrongdoing within our communities. Restorative approaches seek a balanced approach to the needs of the victim, wrongdoer and community through processes that preserve the safety and dignity of all".

5. Restorative justice takes many different forms, but all systems have some aspects in common. In criminal cases, victims have an opportunity to express the full impact of the crime upon their lives, to receive answers to any lingering questions about the incident, and to participate in holding the offender accountable for his or her actions. Offenders can tell their story of why the crime occurred and how it has affected their lives. They are given an opportunity to make things right with the victimto the degree possiblethrough some form of compensation.

6. In social justice cases, impoverished people such as foster children are given the opportunity to describe what they hope for their futures and make concrete plans for transitioning out of state custody in a group process with their supporters.

In criminal cases, types of compensation include, but are not limited to: money, community service in general, community service specific to the deed, self-education to prevent recidivism, and/or expression of remorse.

7. Therapeutic jurisprudence (TJ) is a term first used by Professor David Wexler, University of Arizona Rogers College of Law and University of Puerto Rico School of Law, in a

paper delivered to the National Institute of Mental Health in 1987. Along with Professor Bruce Winick, University of Miami School of Law, who originated the concept with Wexler, the professors suggested the need for a new perspective, TJ, to study the extent to which substantive rules, legal procedures, and the role of legal actors (lawyers and judges primarily) produce therapeutic or antitherapeuticconsequences for individuals involved in the legal process.

8. In the early 90s, legal scholars began to use it when discussing mental health law, including Wexler and Winick's 1991 book, Essays in Therapeutic Jurisprudence. The TJ Approach soon spread beyond mental health law to include TJ work in criminal law, family and juvenile law, health law, tort law, contracts and commercial law, trusts and estates law, disability law, constitutional law, evidence law, and legal profession. In short, TJ became a mental health approach to law generally, and these advances were documented in Wexler and Winick's 1996 book, Law in a Therapeutic Key: Developments in Therapeutic Jurisprudence.

9. The approach was soon applied to the way various legal actors -- judges, lawyers, police officers, and expert witnesses -- play their roles, suggesting ways of doing so that would diminish unintended antitherapeuticconsequences and increase the psychological well-being of those who come into contact with these legal figures. In 1999 in a Notre Dame Law Review article (Hora, Schma and Rosenthal, Therapeutic Jurisprudence and the Drug Treatment Court Movement: Revolutionizing the Criminal Justice Systems Response to Drug Abuse and Crime in America, 74 NDLR 439 (1999),) TJ was applied to drug treatment courts (DTC) drug court for the first time and the authors asserted that DTCs were TJ in action and that TJ provided the jurisprudential underpinnings of DTCs. TJ has emerged as the theoretical foundation for the increasing number of "problem-solving courts" that have transformed the role of the judiciary. These include, in addition to DTCs, domestic violence courts, mental health courts, re-entry courts, teen courts, and community courts. Winick and Wexler described this new judicial model and demonstrated how principles of TJ can be used by the judges in these new courts in their 2003 book, Judging in a Therapeutic Key: Therapeutic Jurisprudence and the Courts.

- **Arbitration** utilizes adversarial procedures.
- **Alternative** dispute mechanisms represent a move toward kadi or ad hoc justice.
- **Restorative** justice is accomplished by means of victim-offender mediation.

- **Arbitration** agreements are enforceable in court.
- **Restorative** justice sometimes happens in the context of a courtroom, and sometimes within a community or nonprofit organization.

10. In the courtroom, the process might look like this: For petty or first-time offenses, a case may be referred to restorative justice as a pretrial diversion, with charges being dismissed after fulfillment of the restitution agreement. In more serious cases, restorative justice may be part of a sentence that includes prison time or other punishments. In the community, concerned individuals meet with all affected parties to determine what the experience and impact of the crime were for all. Those called out for offences listen to others' experiences first, preferably until they are able to reflect and feel what those experiences were for the others. Then they speak to their experience: how it was for them to do what they did. A plan is made for prevention of future occurrences, and for the offender to heal the damage to the injured parties. All agree. Community members hold offender accountable for adherence to the plan.

11. Most academics and government definitions of restorative justice restrict that definition to those programs that involve an encounter between the offender and the victim. Some grassroots organizations, like the Mennonite Central Committee Canada, define restorative justice programs less on who the clientele of the program is, and more on the programs values. This means that programs that only serve victims (or offenders for that matter), but have a restorative framework, are considered a restorative justice program. Restorative justice pioneer Howard Zehr was honored as the recipient of the 2006 Community of Christ International Peace Award. Many Libertarians support restorative justice because it is a victim-centric rather than state-centric approach to law enforcement