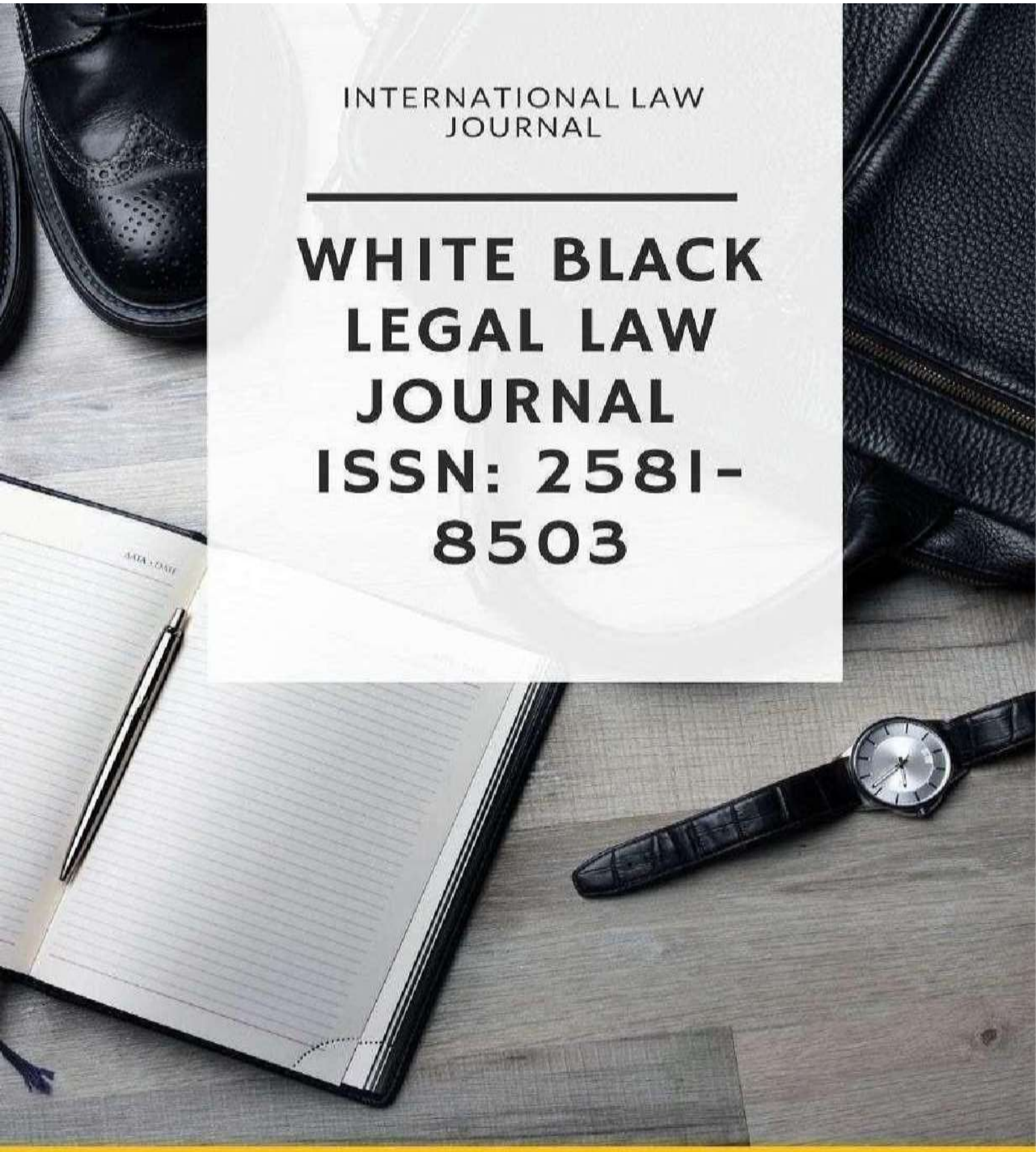

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ABOUT US

WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

COMPREHENSIVE REVIEW AND ANALYSIS OF PAPER "JURAL RELATIONS AND CLASSIFICATIONS-BY ARTHUR L. CORBIN1

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Declaration

I hereby declare that the review entitled ' Comprehensive Review and Analysis of Paper "Jural Relations and Classifications-by *Arthur L. Corbin* ' is being submitted by me for publication in White Black Legal Journal of Law [Vol 2, Issue 16, ISSN 2581-8503, is my original work. The matter embodied in this project has not been submitted anywhere else. This review is my original work and has not been presented earlier in this manner elsewhere. The information incorporated in this project is genuine and authentic to the best of my knowledge.

Introduction

In his 1921 article titled "Jural Relations and Their Classification," Arthur L. Corbin delves into Wesley N. Hohfeld's framework for grasping jural relationships. Published in the Yale Law Journal, this piece has become a cornerstone of legal theory. Corbin starts by highlighting the intricacies of jural relations and stresses the importance of a structured approach to decipher them. He presents Hohfeld's system, which offers eight foundational terms to capture essential legal concepts. These terms act as consistent anchors, helping to dissect varied legal scenarios into core elements.

Throughout the article, Corbin showcases how Hohfeld's model is applicable across different legal scenarios. Examples include its relevance in understanding contract dynamics, defining a franchise,

[1] Arthur L. Corbin, Jural Relations and Their Classification. The Yale Law Journal, Jan., 1921, Vol. 30, No. 3 (Jan., 1921), pp. 226-238, Retrieved October 15th 2023, From, https://www.jstor.org/stable/786527
[2] Affiliated to GITAM University and Recognised by Bar Council of India

and clarifying property rights.

In essence, Corbin's article offers a deep dive into Hohfeld's method, underscoring its role in simplifying and understanding the multifaceted realm of legal rights and relationships.

Review and Analysis

The author of this article begins by pointing out the fact that Professor Albert Kocourek has criticized the work of the late Wesley N. Hohfeld with respect to fundamental legal conceptions in numerous magazines. [3]Along with this, Kocourek has also given credit to Hohfeld's genius and constructive services even though he made extensive repairs and alterations to the same. The author proposes to consider Prof. Kocourek's reconstruction in detail, analyze it closely, and cancel out the reconstruction of Hohfeld's idea.

The author has come up with the idea that instead of going in-depth with the work of Prof. Kocourek, it would be more desirable to focus on the foundation of the legal theories and to produce in an independent manner the jural relation and law, positively affirming that it underlines Hohfeld's classification and in consonance with the present judicial reasoning and terminologies.

The article presses upon the circumstances when it needs to be ascertained what law is in a particular case. The basic question is connected with the action of civilized society via its designated agent. The author has mentioned that it is important to know what the forces of nature will do and what individuals who do not represent organized society will do. For example-

- Will the wind blow down my house?
- Will the rain spoil my hay?
- Will thieves break through and steal?

Though our prosperity and survival depend upon the answers to these questions, the main focus should be on the collective entities of the society and their action as to how they respond in a particular scenario. The author has put forward the argument in the passage that though the study of the above-

[3] The Hohfeld System (1920) I5 ILL. L. REv. 24; Various Definitions of Jural Relation (1920) 20 COL. L. REV. 394; Rights in Rem (i920) 68 PA. L. REv. 322; Plurality of Advantage and Disadvantage in Jural Relations (1920) W1 MICH. L. REV. 47; Tabulae Minores Jurisprudentiae,

mentioned scenarios is important for various aspects of life, including prosperity and survival, this will not constitute the study of law. But the author thought the following example-

- if A borrows money from B and fails to repay, will the court give judgment and the sheriff levy execution?
- If A attacks B and B knock A down with reasonable violence, will the court give judgment against either one, and the sheriff enforce the judgment?

Highlights that our prosperity and our survival depend upon our ability to answer these questions. These questions are the ones dealing with the conduct of the agents of society, and by studying these, we are studying law.

The author has mentioned that among the above bundle of questions, the first set of questions is 'questions of fact,' and the answers to them are answers of fact, whereas the second set of questions are 'questions of law' and the rule of law need to be applied in order to answer these questions.

Hence, it has been clearly identified by the author in the passage that when we deal with law, the conduct of the societal agents and the rule that lays down the uniformity to be maintained in their act need to be pondered. These rules are the rules of law. On the other hand, those rules that help us to ascertain the action of natural forces or of individuals who are not societal agents are not the rule of law. Further, it has been mentioned by the author that rules of physics and rules of law are similar, helping us to ascertain physical consequences and accordingly plan our actions. Now, when this physical action that we are trying to ascertain is the conduct of a state agent, executive or judicial, acting for society, the rule that is applied is called the rule of law, and our relation with other men subjected to the actions of societal agents is called legal or *Jural* relations. The author appreciates that Prof. Kocourek recognizes the fact that jural relations are always between one individual person and another.

Moving forward with the understanding, the author has observed that if organized society is not present, there can not be a law and legal relations. The existence of societal force is vital, and the most important question that pertains to this force is when and how the force will be applied. What will the agents be made to do by the community if they are citizens? Also, "society" or "the state" is constituted by the majority of citizens, and it is they who make these societal agents or giants and

thrust the power into their hands. Now, the most important question, according to the author, that he has presented in this paper is what this giant will do.

Now, the author has provided the possibility of the cation of the giant beautifully with the example as follows-
'A' is an individual, and we are interested in his situation with regard to the question of whether the giant will act or not. Other than these, there is no other possibility of the giant's action. Further, 'A' himself either can or cannot do something that will stimulate the giant to act or not to act.

From the above scenario, we can infer four possibilities: the giant will act so as to affect A, or he will not act, can 'A' influence the giant's conduct, or can he not?
Now, if we introduce another individual 'B' in this scenario and the possibilities double, i.e., the giant will act for A as against B, or he will not; he will act for B as against A, or he cannot; A can influence the giant's action with respect to B, or he cannot, B can influence the giant's action with respect to A, or he cannot. We are here keener on the act of the giant that he will do and in various ways in which A and B are able to affect the giant's conduct.

The author, through this example, put forward the point that we are so interested in them that we have utilized them for the basis of our classifying our huge legal matters into a property, contract, crime and tort, equity and admiralty, and common law and law merchants, substantive law and adjective law. All these classes overlap each other.

The author then insisted on compressing these eight lengthy words to eight single words and having the words be such that they have the same conceptual meaning as those of the sentences.

While dealing with the same task, Hohfeld chose words that are already used in judicial reasoning, and he let those words have one of their usual meanings. Now, these words chosen by Hohfled had many traditional meanings, but Hohfled made sure that in terms of clearness and certainty of these words, all the other extra meanings were canceled out, and people unfailingly adopted the single meaning that he thought the most useful. Hohfled achieved this by arranging his terms in a table, and these tables were a table of correlatives and a table of opposite or negative.

The author then introduced the fundamental legal conceptions as given by Hohfeld. The author has proposed the idea that legal relationships can be structured down into fundamental legal conceptions and can be used to analyze various combinations arising out of these legal conceptions. The author has introduced these eight fundamental legal conceptions of Hohfled: right, no right, duty, privilege, power, disability, liability, and immunity. All these terms are considered to be fundamental as they serve as the basis of more complex legal concepts such as property, ownership, trust, easement, license, and contract. The constant nature of these elements makes them fundamental, and these are being used to analyze scenarios and legal arrangements. Using these basic bricks, we can construct various legal arrangements, and this shows how legal aspects like law and equity or property and contract share a common foundation that ultimately helps us to understand the similarities and differences in various legal situations. Corbin has then mentioned that though we have known about these Hohfled terms, we must not leave the old lengthy language that we have used. We can still talk about these legal aspects of property, trust, contract, etc, in our old familiar language. Along with this, we have more simplified and clear terms to understand these aspects in depth. The author has highlighted that the importance of Hohfled's tables of correlatives and negatives lies in the opportunity that it provides to have a definition and uniform usage. Different terms have been used by Hohfeld to present one or more concepts, and these terms are clear and certain, and one can seclude these terms easily. The author has also mentioned that to him, it appears that people in a legal context, as well as in general, understand the terms "duty" and "power." Also, this can be used as a foundation to understand the other six terms of Hohfled in an easier way and aid the understanding of these legal concepts in a clear manner.

Now, let us enhance our understanding by an example similar to that of the author.

'A' mortgage his watch to take a loan of ₹15,000 from 'B,' the loan amount to be returned within three months from the date of the mortgage. Now, society will command 'A' to pay 'B' and threaten 'A' with some consequences if he fails to repay. It is a societal constraint upon 'A.' In this case, the giant will act against A and in favour of B. Here, the whole series of events is physical, i.e., the mortgaging of the watch, lending of money, the threatened consequences of judgment by a court, and the sale of the watch upon failure of payment. This whole situation is as physical as the act of B himself demanding and grabbing the money out of A's hand. The author points out that it is due to the physical consequences that involve certain actions by the agent of the society, and this action is

based upon the expressed rule of uniformity of action.

Now, if we have to say that these physical consequences are imminent if A does not pay B, we will say that B has the *right* to payment and A has a *duty* to pay. It is because of the existence of certain facts, i.e., B lending money to A, that these rights and duties have arisen, and there are certain physical consequences in the form of action by the agents of the society.

Now, if B in writing says to A that he need not repay him and also returns his watch, then here we know that B will no longer have any right nor A will have any duty, and there will be no command or physical consequence on A by the society to repay the money. Also, there will be no judgment by the court regarding the repayment and sale of the watch.

Following this situation, the author has asked how we present this fact, and the answer to this, as given by Hohfeld, is that here, 'A' is entrusted with a *legal privilege* of not to pay, and B now does not hold any right of repayment that is B has *no-right*.

The author has then put these series of facts and has shown their legal consequences as follows-

i) - made an offer to mortgage his watch and acquire a loan from 'B' that vested 'B' with certain power and 'A' with liability. Here, the fact that 'B' accepted the offer voluntarily, along with other facts, set in motion the action by the societal agent against 'A,' and it must be noted that if such other facts do not exist, the action will not be stimulated.
ii) B- by accepting the delivery of the watch and lending money to 'A,' he entrusted himself with certain rights and 'A' of duty. Also, the violation of this right of 'B' by 'A' by not following his duty will have physical consequences as a result of the action of the agent of the society.
iii) Now, when 'B' in writing tells us that he need not repay the amount and can take back his watch, 'B' by doing so is waiving his right, and setting 'A' free from his duty is giving a privilege to 'A' to not repay the amount.

Corbin has then compared two of these situations. First, it took the situation according to our example, just after 'B' gave the loan to 'A' and second, after 'B' gave in writing to 'A' that he need not pay back the loan. Here, in the first case, physical action by the agent of the state is imminent as against

'A,' but it is not in the second case. The two situations are very different, but one thing that does not vary is the uniformity of rules subject to which the action of the agent against 'A' and 'B' can be predicted. In the first case, according to the rule, the mortgage of the watch in lieu of the money creates a debt upon 'A,' and it gives the court to adjudicate the matter accordingly and give judgment in favor of 'B' and 'B' can sell the watch to make up the loss. In the second case, according to the rule when 'B' voluntarily gives in writing that 'A' need not repay the loan and can take back his watch, this gives no chance to the court to give a judgment in favor of 'B' neither can 'A' be held liable for non-payment of the loan. In both these cases, in the first one, the knowledge is more detailed than in the second, and also, the action predicted is positive. As in the second case, we predicted non-action and not just what the court will say or B can do.

The author also mentions that we may say that in the first case, A and B are in a legal or jural relation, and in the second case, they are not, or it might be said that in the second case, they are in a new legal relation. But whatever may be the case, we are more or less considering the physical conduct of the societal agent of the community.

Corbin also took up the point in the paper that a recent article by Prof. Kocourek, which he mentioned at the beginning of the paper, has taken into consideration Hohfeld's classification and the terms introduced by them. Perhaps he has acquired them to some extent and has made certain modifications. The author has acknowledged that even though there are certain differences in Kocourek's details, his idea might still be applicable, but the author has refrained from getting into the nitty-gritty of Kocourek's work. Also, the author has highlighted certain differences in Prof. Kocourek's choice of definition for the term "jural relation," which complicates his analysis and results in the multiplication of terms. Study of certain categories of relations according to Kocourek, i.e., "nexal" relations, "simple" relations or "quasi-jural" relations, and "naked" relations, will be complicated without a thorough analysis of Kocourek's original works and the author has decided to leave the analysis this upon Prof. Kocourek's own work.

Further, it has been mentioned by Corbin that Prof. Kocourek accepted that his analysis is complicated, and certain differences that he wanted to build up are difficult to understand.

Perhaps Kocourek would have created twenty-four new terms to be assigned to twenty-four relations

that he identified. But he refrained from doing this as there is a tradition of using particular terms for different legal and non-legal situations. Therefore, he focused on using the already existing terms.

On the other hand, Hohfled had done constructive work, where he took up ordinary and common terms that lawyers and other members of the legal community understand easily. Hohfled acquired very basic concepts that are used in reasoning by the courts and lawyers. For example, situations related to law are often referred to as jural or legal situations by the lawyers and other members of the legal community. Also, any rule that deals with the code of conduct in a society is called a rule of law. Hohfled went along with the common practices that were in practice in the legal community. The only task that he assigned himself was to observe the legal or jural relationships in a similar way as done by the other and describe the same in the ordinary language. In the same way, Hohfled also acknowledges the clear difference between the situations that involve action enforced by the societal agent and the situations that do not involve the same. It is very important to know when the agents of society or the government might step in and take action in these legal situations. It must also be noted that the term "legal duty" drapes all the possible cases where these facts exist.

Corbin has then also explicitly talked about the term "legal duty," which means the action and rules enforced by society, more specifically through its executive and judicial agents like police and courts, respectively. The term "legal duty" has been understood in this way by most people, including lawyers and judges. He also mentions that while it might appear good to define the "jural relations" in a narrow manner as only involving rights and duties that society enforces, this could portray a restricted idea about legal relations. There are other terms like "privilege," "power," and "immunity" to be used in the context of jural relations, but they might not be directly enforced by society. Hohfled had the view that using more complicated terms that do not go in line with the common understanding of the people would confuse them and make communication harder. Also, the example previously mentioned by the reviewer relating to the mortgage of the watch to take a loan between two individuals, A and B, represents a jural relation consisting of rights and duties along with other terms like privilege, immunity, no-rights, etc.

Moving to the last phase of discussion, Corbin has pointed out that differences about "jural relations" may arise due to differing views on what law is and how it works. Few might think that for a certain code of conduct or instruction to be a "rule of law,' it has to be a command from the society that is

enforced through power. But if we only think of law as a command, we might ignore other important aspects of law. Though it is understood that command is quite important to understand rights and duties, it must also be kept in mind that there are other aspects that must also be taken into consideration. It's not just a command that comes from society; instead, society also permits, enables, and disables certain actions. These rules that permit, enable, and restrict are to be taught in law schools. The lawyers need them to advise their clients, and the court makes and applies them while pronouncing the judgment. Even if a command does not exist, these rules are still applied. For example, granting permission does not necessarily involve forcing someone or enabling someone of something that might allow them, though not always to exert societal control. All these rules that enable or permit may sometimes exist together.

Conclusion

Whenever we try to analyze any legal scenario or create new legal terminologies, it must be kept in mind that mere analysis does not give us an idea about how this will be applied in a particular situation. For us to understand these legal concepts of rights, duties, and privileges is one part, and working out on them to find if they apply to certain cases or what facts lead to their existence is a different part, and both of these are very important to understand. A law is made by taking into consideration all other factors and not merely through a logical analysis. Also, viewed from the lens of a legal expert like a judge, their decision is not merely based on the strict definitions of the legal concepts, but other important ideas like principles of natural justice, public policy, or customary beliefs are also taken into consideration. Now, since ordinary men have a completely different view on the idea of justice and their rights, conflict arises between individuals and nations.

Overall, to understand this complex idea of jural relations and legal situation, the expert of laws needs to acquire knowledge of other allied fields like legal history, anthropology, economics, and social sciences. It helps to understand the whole idea of justice in its true sense, along with its meaning in different contexts. Accurate legal terms and clear analysis of the same are also important as they serve as a very important tool while dealing with legal situations, and if we lack such tools, we cannot understand the situation correctly, and it will lead to confusion and misunderstanding.