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QUESTION NO 3

TITLE

Title is a link between a person and an object to establish ownership of property. A title is the de facto antecedent of which the right is the de jure consequent. Right of possession on ownership comes in term of de facto first and later de jure. For example, I have a watch on my hand. How it can be said that it is my, or I have title over it. I have either purchased it, or someone has gifted me, or I have inherited it from elsewhere. Title is created even of stolen objects. It is right of ownership in fact and in law over property.

Kinds of Title

There are two kinds of title are as follow

Investitive factsInvestitive facts create rights. This right is created first time on the objects, which are ownerless. When I catch fish it is my original title and if I purchase it from elsewhere then it is called derivative title. Derivative right is second right, which is created after gone away of original right.

Divestitive factsDivestitive facts are those, which loss or keep away of right is termed as divestitive facts.

Alienative rightAlienative right is right which is separated or transferable.

Extinctive rightExtinctive right is right which is kept away or destroyed.

Agreement -

Property may also be acquired by agreement which is enforceable by law. The owner of a right can transfer his rights in property to another with or without consideration. If it is for consideration it is called a sale and if it is without consideration it is called a gift. It is one of the important principles of law based on the Maxim "Nemo dat quad habet legime", that is no one can convey a better title than he himself has, as a general rule.

According to Paton, an agreement is an expression by two or more persons communicated each other to the other of a common intention to affect the legal relation between them.

Agreement

A meeting of minds with the understanding and acceptance of reciprocal legal rights and duties as to particular actions or obligations, which the parties intend to exchange; a mutual assent to do or refrain from doing something; a contract.

The writing or document that records the meeting of the minds of the parties. An oral compact between two parties who join together for a common purpose intending to change their rights and duties.

An agreement has four essential elements which are as follows -

- 1) There should be two or more parties to an agreement
- 2) Mutual consent of the parties
- 3) It should be communicated;
- 4) There should be common intention to affect the legal relationship

TYPES OF AGREEMENT

Ø Social agreement

Ø Legal agreement

Ø Sale deed agreement

Ø Mortgage agreement

Ø Construction agreement

Ø Research agreement

Ø Confidentiality agreement

Ø Material transfer agreement

Ø Service agreement

Ø Small business innovation research agreement

-Social Agreement.

QUESTION NO 4

SUBSTANTIVE LAW.

Substantive law establishes the rights and obligations that govern people and organizations; it includes all laws of general and specific applicability.

What is Substantive Law

Substantive law deals with people's rights and responsibilities. For example, substantive law dictates the kind of punishment that someone may receive upon being convicted at the conclusion of his criminal trial. Substantive law also defines types of crimes and their severity. For example, substantive law is used to decide whether a crime was a hate crime, whether a murder was committed in self-defense, and so on. Substantive law is then relied upon to determine the rights that are afforded to the accused.

Substantive law deals with the remedies and rights of every citizen. Thus the substantive law deals with ends the administration of the justice seeks, and the procedural law deals with the means to attain that end. Civil law with which we are concerned may be divided into substantive law and procedural law.

FOR EXAMPLE.

A child born during marriage or continuance of the marriage or within 280 days of its dissolution, is conclusively taken to be legitimate unless non-access is to be proved and the mother of child has not remarried.

Substantive Law in a Lawsuit

Substantive law in a lawsuit refers to the substance of a case, in that it deals with the elements of the case, and clearly defines the area of law that applies to each particular case. This way, the best plan of action can be taken insofar as bringing a lawsuit against someone, or defending someone who has found himself at the center of a lawsuit. For instance, substantive law in a lawsuit for a negligence claim consists of four major elements:

The duty to protect others

The failure to exercise a reasonable standard of care

Proximate cause

Actual injury

The laws of the state in which the lawsuit is brought will dictate the nature of the case, and will determine to what extent each of these elements exists.

Negligence is most commonly pursued in cases involving motor vehicle accidents. While all states will insist that a plaintiff prove the existence of these four elements of substantive law in a lawsuit to be victorious in a negligence claim, each state will differ insofar as its specific driving laws are concerned. For instance, while someone is not allowed to make a right turn on

red light in one state, he may be allowed to do so in another state. Therefore, a plaintiff in a state where this is illegal may have a case for negligence, while a plaintiff in a state that allows it might not.

Substantive Criminal Law

Substantive criminal law deals with the elements of a case insofar as whether the issue at hand can be considered a crime or not. For every alleged crime that has taken place, there are specific elements that must exist in order to classify it as a crime. For instance, substantive criminal law would dictate that, for a person to be charged with the crime of burglary, the following elements must be present:

1. Unlawful breaking and entering...
2. Into a building...
3. With the intention of committing a crime.

If these three elements are not present, then the incident may not be classified as a burglary, and a jury may decide that the accused is innocent, and that no crime had been committed.

Substantive criminal law differs based on the state or jurisdiction in which the alleged crime took place. There do not exist standard elements for every crime, nor for every jurisdiction. In the state of California, for instance, for a person to be convicted of assault, the prosecution would have to prove that:

1. The accused touched the victim with the intent to harm him
2. That the victim did not want to be touched
3. That the accused harmed the victim
4. That another reasonable person would have been offended by the accused's touch

Therefore, if Gary punched Jason in a bar, and broke his nose, for making a comment that offended Gary, Gary would likely be convicted of assault because:

Gary made contact with Jason with the intent to hurt him Jason surely did not want to be punched Gary injured Jason by punching him

Another reasonable person would have been offended by Gary punching him in the face

PROCEDURAL LAW

Procedural law establishes the legal rules by which substantive law is created, applied and enforced, particularly in a court of law.

Procedural law,

also called adjective law, the law governing the machinery of the courts and the methods by which both the state and the individual (the latter including groups, whether incorporated or not) enforce their rights in the several courts. Procedural law prescribes the means of enforcing rights or providing redress of wrongs and comprises rules about jurisdiction, pleading and practice, evidence, appeal, execution of judgments, representation of counsel, costs, and other matters. Procedural law is commonly contrasted with substantive law, which constitutes the great body of law and defines and regulates legal rights and duties. Thus, whereas substantive law would describe how two people might enter into a contract, procedural law would explain how someone alleging a breach of contract might seek the courts help in enforcing the agreement.

To be effective, law must go beyond the determination of the rights and obligations of individuals and collective bodies to say how these rights and obligations can be enforced. Moreover, it must do this in a systematic and formal way, because the failure to do so would render the legal system inefficient, unfair, and biased and, as a result, possibly upset the social peace. Embodying this systematization and formalization, procedural law constitutes the sum total of legal rules designed to ensure the enforcement of rights by means of the courts.

Because procedural law is a means for enforcing substantive rules, there are different kinds of procedural law, corresponding to the various kinds of substantive law. Criminal law is the branch of substantive law dealing with punishment for offenses against the public and has as its corollary criminal procedure, which indicates how the sanctions of criminal law must be applied. Substantive private law, which deals with the relations between private (i.e., nongovernmental) persons, whether individuals or corporate bodies, has as its corollary the rules of civil procedure. Because the object of judicial proceedings is to arrive at the truth by using the best available evidence, there must be procedural laws of evidence to govern the presentation of witnesses, documentation, and physical proof.

Source of Procedural Law

Procedural law is set by each individual jurisdiction. Each state has its own procedures, as does the federal court system. In fact, individual counties or other small jurisdictions may have specific procedures that must be adhered to. These often include the manner in which cases must be filed, how

notification must be given to the parties, and how the records are handled.

These laws can be found in the Rules of Civil Procedure, and Rules of Court of the individual jurisdictions.