Adherence to precedent is necessary to ensure that litigant do not lose faith in the fair administration of justice and a fair degree of certainty in the legal system. As observed by **Blackstone** - 'For it is an established rule to abide by former precedents where the same point come again in litigation as well as to keep the scales of justice even and steady and not liable to waver with every new judge's opinion, as also because the law in that case being solemnly declared and determined what before was uncertain and perhaps indifferent has now become a permanent rule which it is not in the breast of any subsequent Judge to alter or vary from, according to his private sentiment".

While the principle that judgment of a superior court is binding on inferior courts is easily understandable, English law has gone further in the sense that courts on higher level i.e. court of Appeal, Division court and Courts of criminal appeal are bound ;by their own decisions.

The House of Lords too was bound by its earlier judgments. However in 1966 the HL announced that an adherence to the above principles might do unjustice in a particular case, therefore they proposed to deviate; or depart from earlier decisions when it was right to do so.

India

The doctrine of Stare Decisis (binding force of precedent) has been given constitutional sanction by Article 141.

However, in ***Bengal Immunity case*** it has been held that the expression 'courts' does not include Supreme Court. In ***Minerva Mills Case***, the Supreme Court observed: certainty and continuity are essential ingredients of 'rule of law'. But the doctrine of Stare Decisis should not be regarded as a rigid and inevitable doctrine which must be applied at the cost of litigation.

THEORIES OF JUDICIAL LAW

1. **The declaratory theory of precedent (Blackstone):**

According to this theory a Judge never makes a law, but merely declares what the existing rule of law is.

Blackstone: "A Judge is sown to determine not according to his own private judgment, but according to the known laws and customs of the land, not delegated to produce a new law, but to maintain and explain the old one".

While Blackstone's theory found a powerful support in ***James Carter***, it was strongly criticized and refuted by Bentham, Salmond and Brown; all of them maintained that Blackstone's theory does not hold water is evidenced by following facts.

i) The narrow compass of human wisdom cannot take in all cases where time may discover.
ii) Abundance of materials in law reports.
iii) The whole body of equity of jurisprudence is evidence of the role of judges as lawmakers.
iv) Legal principles are not eternal; they do undergo modification at the hands of judges.

Brown – "Chief demerit of the declaratory theory is that it overlooks the important fact that judges reveal in their judgments not merely the influence of ancient and established ideas and beliefs but also influence of time spirit; thereby giving expression to rules which are new, both in the sense that they have not found expression in an earlier case and in the sense that they could not have done so".

2. **Judges are Lawmaker**

Coke: Judicial decisions are not sources of law, but the best proofs of what the law is.
Hale: Decisions of court of justice don't make law.
Esher: There is in fact no such thing as Judge made law.

Scrutton: *(Hernett vs. Fisher)* held that the court sits to administer law not to make law.

In ***Rajasthan vs. State of West Bengal*** Hidayatullah J. "No doubt law declared by the court binds all court but judges don't enact.

Bentham: It is a willful false hood having its object the stealing legislative power.

Austin: Childish fiction employed by our judges.

Dicey in **'law and opinion in England':** "As all lawyers are aware, a large part and as many would add, the best part of law of England is Judge made law."

Bacon: Power which the judges decide in cases of first impression are distinct contribution.

Gray: Whoever hath an obsolete authority not only to interpret the law but to say what law is.

Salmond: Evidently troubled in mind to true position.

Radcliff: There was never a more sterile controversy than that upon the question whether a Judge makes law.

Lord Denning: Judges do everyday make law.

In ***Gujarat Steel Tube vs. Majdoor Shabha***, Supreme Court recognizes without hesitation that judges do must legislate but they can do so only interestlessly, they are confined molar to molecular.

Allen: A man who chops a tree into log has in a sense made logs.

Cordojo – Also supports it.

Kinds of precedents

1. Authoritative Precedent is one which the court to which it is cited must follow.

   In India, the constitution provides that law declared by Supreme Court shall be binding in all courts of India. A bench of two or more judges is bound by the decision of the full bench of the same court.

   Exceptions to the rule:

   i) Where the court which decided the case committed an error in not being aware of the statutory provision, the precedent is not binding.
   ii) Where it is repugnant to later precedent of a higher court.
   iii) Nullified and modified by subsequent statute.
   iv) Conflicting precedents of courts of equal authority. The maxim of law is ***"Cessante ratione legis cessat lex upsa"*** i.e. when the reason for any particular law cases, so does the law.
2. Persuasive precedents are not binding but are given high respect.
3. Declaratory and original precedents: judicial decisions being creature of law are called original precedents while latter called declaratory precedents.

Binding Elements in Precedents

A. **The ratio decidendi:** Each Judge in a case will give his judgment and it is not that every part of the judgment that acts as judicial precedent. It is therefore important that a Judge who is using a case as a precedent should be able to recognise that part of the previous judgment which is binding upon him.

The portion of a previous judgment that is binding is called the ratio decidendi (the reason for deciding). This consists of the portion of law which was essential to the Judge in coming to his decision.

Thus three shades of meaning can be attached to the expression 'ratio decidendi".

1. The first is the translation of it: it is the reason for deciding.
2. Secondly, it may mean the rule of law proffered by the judge as the basis of his decision.
3. Thirdly, it may mean 'the rule of law which others regard as being of binding authority.

The word decision is often loosely used to cover all the words the Judge says in course of his judgment but strictly Speaking a decision is only part of the judgment.

Every decision consists of

1. A statement of the facts and an indication as to which of these the Judge consider material to the consideration of law
2. An account of the reasoning towards the actual decision.
3. Actual decision interpartes.

Once a Judge had found what he considers to be the ratio decidendi of a previous case he will either:

i) follow it by applying the ratio to the case before him, or
ii) Distinguish his present case from the facts of earlier case, or
iii) Overrule the previous decision.

Various tests have been proposed for determining the ratio decidendi:

i) Difficult task of finding ratio is though there would be a measure of agreement in propounding that no rule should be treated as ratio which would not support the ultimate order. Where a stated rule obviously bears no relation to facts it is no more than a dictum.
ii) Even when deciding Judge has given no reason for his decision it may be possible for a subsequent tribunal to extract one from it.

In ***State of Orissa v. Misra (1968)*** Supreme Court: "A decision is only an authority for what is actually decided what is the essence in a decision is its ratio and not every observation found therein nor what logically follows from various observations made in it.

B. **Obiter Dicta**

In **"Keeton's Jurisprudence"** – Obiter dicta are described as "statements of law made by a Judge in the course of a decision, arising out of the circumstances of the case but not necessary for the decision". Whereas ratio is the underlying principle or legal reason of a case and the very heart of the precedent. Principles laid down by a Judge which do not form ground of his decision and which are not applicable to the case under consideration are only Obiter dicta. Such dicta do not have any binding authority. They are merely persuasive.

In India, however, the obiter dicta of the Supreme Court are binding upon various other courts in India, provided that such dicta is on a question that arose for determination by the Supreme Court. Obiter dicta; nonetheless, assumes relevance as they help to rationalize the law and suggest solution to problems yet to be resolved by the court. **Salmond**: "The obiter dicta of the great masters like Blackburn often enjoy a greater prestige than ratio decidendi of lesser judges."

Circumstances which destroy the binding force:

1. Abrogated decisions overruled by a Superior Court. Reversal occurs when the same decision is taken on appeal and is reversed by the appellate court.
2. Ignorance of statute.
3. Inconsistency with earlier decisions of higher courts.
4. Inconsistency between earlier decisions of same rank.
5. Precedent **sub silentio** or not fully argued.

In ***Gerard v. Worth of Paris Ltd (1936)*** an employee was discharged by a company and he obtained damages for wrongful dismissal. The employee applied for a Garnishee order on a bank account standing in the name of the official liquidator of the company. The only point argued was on the question of priority of the claimant's debt and on this argument being heard, the court of Appeal granted the order. No consideration was given to the question whether a garnishee order could properly be made on an account standing in the name of the liquidator.

6. Decisions of court equally divided. Usual practice is to dismiss the appeal.

Legislation is that source of law which consists in the declaration of legal rules by a competent authority. Such competent authority is called the legislature.

Salmond – In another sense, legislation includes every expression of the will of the legislature, whether directed to the making of rules or not. In this every Act of Parliament is an act of legislation, irrespective altogether of its purpose and effect. The legislature does not confine its actions to the making of rules: yet, all its functions are included within the terms of legislation.

Kinds of legislation:

Legislation is either Supreme or subordinate.

1. ***Supreme Legislation:*** Supreme legislation is that which proceeds from supreme power of state, which is incapable of being repeated, annulled or controlled by any other legislative authority. n England, the British parliament is in every sense supreme.

   In India, the parliament is not supreme in the British sense, for its laws can be questioned in a court of law, which may declare them ultra vires. However, according to the modern concept of sovereignty, even legal restraints do not militate against the sovereignty. Looking at it from this angle, all federal legislatures are also supreme.

2. ***Subordinate Legislation:*** Subordinate legislation is that which proceeds from any authority other than the sovereign power, and it therefore depends for its continued existence and validity on superior authority: They are
   i) Colonial
   ii) Executive
   iii) Judicial
   iv) Municipal
   v) Autonomous (by laws, university etc.)

Direct and indirect legislation

Direct legislation is legislation in the strict connotation of the term and means the framing of laws by the legislature.

Indirect legislation, on the other hand, is legislation in its widest sense and includes judicial interpretation of statutes, and the application of equitable principles by the judges. The various kinds of subordinate legislation mentioned above excepting colonial legislation falls within the ambit of indirect legislation.

Advantages of the legislation over other sources of law:

Salmond – So great is superiority of legislation over all other methods of legal evolution that modern tendency is to acknowledge its claim exclusively, and to discard the other instruments.

1. **Abrogative power:** Can make or unmake law. **Cardozo** – "Legislation can eradicate a cancer, right some hoary wrong, correct some established evil which defies the feebler remedies."
2. Division of labour.
3. **Declaration:** It is formally declared before it is applied.
4. Provision for future cases.
5. Form, Clarity and Accessibility.

Salmond – "Gold in the mine while statute is coin of the realm."

Austin – The vast difficulty of successful codification, no rational advocates of codification will deny or doubt. Its impossibility none of its opponents will venture to affirm.

Keeton: "Today citizens and lawyers alike are faced with a statutory progeny as alarming as the ghostly issue of Banquo were to Macbeth."

Delegated legislation: Necessity: Rabson, Port, Laski, Jennigs

Opposed by: Hewart, Sankey, Keeton, Allen.

Keith: Dangers of delegated legislation.

[**Note:** Students are also suggested to read "Delegated legislation and its safeguards from any good text book viz., Tripathi, Dias).

RIGHT AND DUTIES

Definitions:

General definition: The standard of permitted action within a certain sphere.

Legal definition: The standard of permitted action by law.

Salmond defines **legal right** as "an interest recognised and protected by a rule of legal justice - an interest the violation of which would be a legal wrong, done to him whose interest it is, and respect for which is a legal duty.

A **natural right** is an interest recognised and protected by a rule of natural justice – an interest the violation of which would be a moral wrong, and respect for which is a moral duty."

Ihering in 'Spirit of Roman Law' defines right as "a legally protected interest".

Austin – "A faculty which resides in a determinate party or parties by virtue of a given law and which avails against a party or parties other than the party or parties in whom it resides."

- **Essence (as per Austin)** – A corresponding duty a must.
- **Criticism** – Imperfect as there is no place for imperfect rights.

"A party has a right when another or others are bound or obliged by law to do or forbear towards or in this regard of him".

Gray defines: "that power which has to make a person or persons do or refrain from doing a certain act or certain acts so far as the power arises from society imposing a legal duty upon a person or persons."

Holland defines: Legal right must be distinguished from 'might' or 'moral right'. Legal right – If irrespective of his having either the might or moral right on his side, the power of the state will protect him in so carrying out his wishes, and will compel such acts or forbearances on the part of other people, ... – legal right.

"A capacity residing in one man of controlling with the assent and assistance of the state the actions of others."

Allen: "Rights spring from right. Principles of liability is the last analysis, must be derived from the moral sense of the community."

Positivists: They are opposed to the idea of natural rights and they do not regard it as more than a fiction or a metaphor.

According to **Salmond**, for an interest to be regarded as a legal right, it should obtain not merely legal protection but also recognition. Salmond further observes: "the interests of beasts are to some extent protected by the law in as much as cruelty to animals is a criminal offence. But Beasts are not for this reason possessed of legal rights. The right in question belongs really to the organized society, for **interest recognised by the law** is that of society at large which desires the welfare of its animals."

The protection of human interests is the primary purpose of social organisation, but the law does not protect all such interests. According to **Ihering** such of those interests that have gained legal protection can be regarded as legal rights.

In other words, the existence of the legal rights is dependent on the circumstances that some human protest has secured the protection of the state.

Gray observes that, "right is not the interest itself, it is the means by which the enjoyment of the interest is secured".

e.g. it is my interest to receive Rs. 100 from X and if X is bound by law to pay me, I have a legally protected interest and a legal right. The legal right however, according to Gray is not payment of money. But the power to get the money from X.

Duguit: "No one has any right other than to do his duty."

- He denies the concept of rights.

Kelsen: There is no such conception as right in law. He denies legal right.

Case: ***State of Rajasthan v. Union of India (1977 SC):***

In a strict sense - Legal rights are correlative to legal duties - interests which the law protects by imposing duties on others.

In a generic sense, legal rights are immunity from the legal power of the others: Immunity is exemption from the power of another in the same way as liberty is exemption from the right of another. Immunity in short is "no subjection".

Jural Relations:

In wider sense, right includes other legally recognised interests without considering whether they have a corresponding legal duty or not.

Claims, liberties, powers and immunities are assumed under the term 'right' in ordinary speech, but for the sake of clarity and precision it is essential to appropriate that this word has undergone four shifts in meaning.

They connote four different ideas concerning the activities of man:

1. Y's duty with regard to X would be expressed by X as you ought (must) (X is said to have a **claim or right** in strict sense).
2. X's freedom to do something in relation to Y would be expressed by X as 'I may' (X has **liberty or privilege**).
3. X's liability to alter Y's legal position would be expressed by X as 'I can' (X has **power**)
4. Y's inability to alter X's legal position would be by X as 'you cannot' (X was on **immunity**).

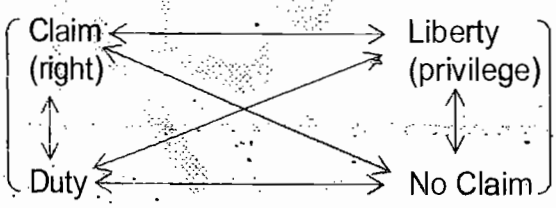
Salmond: The term legal right in its generic sense means 'any advantage or benefit which is in any manner is conferred upon a person by a rule of law'. Four kinds of legal rights:

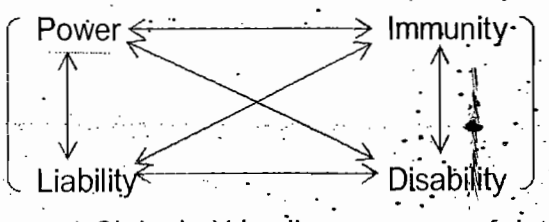
Rights	**Correlatives**
1. Right	1. Duty
2. Liberty	2. No right
3. Power	3. Subjection/liability
4. Immunity	4. Disability

Hohfeld in "Jural Relations", set out his **table of Jural relations** as follows: (Kocourek pointed out the defect in Hohfeld's theory. Kocourek's theory has been adopted by the 'U.S. Restatement of the Law'.)

Jural	Right	Privilege	Power	Immunity
Correlatives	Duty	No right	Liability	Disability
Jural	Right	Privilege	Power	Immunity
Opposites	No rights	Duty	Disability	Liability

The following presentation of this table by G. L. Williams explains its better:





Jural Correlatives: (Vertical arrows and read both ways) Claim in X implies presence of duty in Y (but in so far as duty may exist without claim).
Again liberty in X implies presence of no claim in Y and vice versa.

Jural opposites or Jural negation: (diagonal arrows) claim of X implies absence of liberty in himself and vice versa.

Jural Contradictories: (Horizontal arrows) claim in X implies the absence of 'liberty' in Y and vice versa.

The scheme can be considered in details as follows.

1. **Claim – Duty relation (you ought):**

Holfeld himself suggested the word claim as a substitute for 'right' (Salmond has used 'right' in place of 'claim'). He did not deal at length with this relation, believing that the nature of claim and duty was sufficiently clear. A claim is simply a sign that some person ought to behave in certain way.

2. **Liberty and No claim relation (I may)**

Holfeld distinguished the freedom which a person has to do or not to do something from claim and called it 'privilege'.

e.g. X's so called right to wear a bowler hat consists (on Holfeld's analysis) of a liberty to wear the hat and another liberty not to wear it.

i) Duty and liberty are jurally opposites. If for *e.g.* X were under a duty to wear a bowler hat, this would imply in him the absence of any liberty not to wear it. In Holfeldian analysis opposite of duty means that there is no liberty to do whatever is opposite to the content of the duty. Similarly, if X were under a duty not to wear the hat this would be opposite of a liberty to wear it.

ii) If Y has claim there must be a duty in X. A duty in X implies the absence of a liberty in X. Therefore, a claim in Y implies absence of a liberty in X *i.e.* claim and duty are jural contradictories.

iii) Conversely, the presence of a liberty in X implies the absence of a claim in Y. Holfeld calls this condition no claim. Therefore, a liberty in X implies the presence of a no claim in Y *i.e.* liberty and no claim are jural correlatives.

Distinction between claim and liberty:

A claim implies a correlative duty but a liberty does not. X's liberty to wear a bowler hat is not correlative to duty in anyone. There is indeed a duty in Y not to interfere, but Y's duty not to interfere is correlative to X's claim against Y that he shall not interfere with X's liberty to wear the bowler hat and his claim not to be prevented from doing so are two different ideas. Thus X may enter into a valid contract with Y where X gives Y permission to prevent him from wearing the hat, but X says he will nevertheless try to wear it.

It is usual for liberties to be supported by claim, but it is important to realize that they are distinct and separate. Liberty may result from:

a) the fact that legislators and judges have not yet pronounced on a matter and represents the residue left untouched by encroaching duties *e.g.* invasion of privacy.
b) A deliberate decision not to interfere.
c) Deliberate abolition of a pre-existing duty

3. **Power and liability (I can)**

Power denotes ability in a person to alter the existing legal condition whether one self or of another. **Liability:** Correlative of power denotes the position of a person whose legal condition can be so altered.

A distinction needs to be drawn between liability which is correlative to power *i.e.* Jural relation for what purpose may be termed 'subjection'.

Distinction between Claim and Power (Salmond uses 'right' in place of claim)

A claim is always a sign that some other person is required to conform to a pattern of conduct; a power is ability to produce a certain result.

Distinction between duty and liability

demand. Before such demand is made Y is under a liability to be placed under the duty.

Distinction between duty and subjection (Salmond uses 'subjection' in place of liability)

If X promises Y under seal or for consideration that he will pay Y Rs 5/- on following day should it rain, there is clearly no duty in X unless and until the event occurs.

4. **Immunity - Disability relation (you can not)**

Immunity denotes immunity from power of another, while disability denotes absence of power.

Classification of Rights according to their object:

1. Right over material things: Thus one's right over one's land, house, car, books *etc.*
2. Right in respect of one's own person: Thus one's right not to be assaulted or falsely imprisoned by anybody are rights over one's own person.
3. The right of reputation: No person has the right to defame another either by libel or slander.
4. Rights over incorporeal property: Rights over patent right, copyrights, trade marks.
5. Right in respect of Domestic relations: these include, marital rights, parental rights, masters right over his servant. Violation of one's marital rights can take place by adultery, abduction.
6. Rights in respect of other rights: Thus in a contract of sale buyer acquires a right: the right of ownership over the object of sale.

Classification of rights

1. **Perfect and Imperfect Rights:** A perfect right is one in respect of which action can be instituted in a court of law, and the judgment enforced against the judgment debtor.

While perfect right is enforceable in law, an imperfect right is one which cannot be enforced on account of some legal defect. *e.g.* (a) claims barred by lapse of time (b) claim unenforceable owing to take of legally requisite proof (c) claim against foreign state or sovereign.

All cases of imperfect rights are exception to the maxim Ubi Jus ibi remeduim.

Nature of rights against the state: According to **Austin**, subjects cannot have rights as a sovereign can have no duty. A sovereign state in Austin's view derived obedience from all and owes it to none. A law imposing a duty on sovereign has to be set by someone superior to the sovereign. If the state has no duty, it follows that the subjects could have no correlative rights. (A question mark can be raised upon this analysis).

Salmond's view: "A subject may claim rights against the state, no less than against another subject. He can institute proceedings against the state for determination and recognition of those rights and claim judgment in his favour – but there can be no enforcement of that judgment." The absence of enforceability, however, does not mean, the absence of right. This is a right which is recognised but not enforceable, (is an imperfect right.)

In modern times, rights against the state are recognised and enforced. Hence, the better view is that the state can have rights and is also subject to duties.

2. **Positive and Negative rights**

A positive right entails a positive duty and is a right entitling its owner to a positive act to be done by the person on whom the duty lies.

A negative right corresponds to a negative duty, and is a right entitling its owner, to a negative act or forbearance on the part of the person on whom the duty lies. Thus former is a right to be positively benefited, while the latter is merely a right not to be harmed, *e.g.*: (a) if A had bought goods from B, B has positive right to claim the money for the goods from A.

(b) A is employed by B as an apprentice in B's business, and agrees not to serve in a rival business for two years. B has negative rights to forbearance on the part of A.

A positive right corresponds to a positive duty while negative rights correspond to negative duty. The content of a positive right is positive act, while the content of negative right is forbearance.

A positive right entitles its owner to an alteration of the present position to his advantage. A negative right on the other hand requires only the passive acquiescence of the other party.

3. **Right in rem and Right in personam:**

Salmond – "A right in rem, sometimes called a real right, corresponds to a duty imposed upon persons in general; a right in personam sometime called a personal right corresponds to a duty imposed on determinate persons. A right in rem is available against the world at large, a right in personam is available against a particular person."

Thus a person's right not to be defamed or assaulted are rights available against whole world and are rights in rem. Again, A agree to sell his car to B for a specified sum. A commits breach of the contract, B will thereupon have right to sue A for damage. These rights are personal to both and are called right in personam.

Generally speaking right in rem are negative rights while rights in personam are positive rights.

4. **Rights in repropria and rights in realiena**

Salmond: "A right in realiena or encumbrance is one which limits or derogates from some more general rights belonging to some other person in respect of the same subject matter. All others are jura in repropria. The owner of chattel has in repropria a right over his own property; the pledgee of it has right in realiena, a right over the property of someone else."

Thus, a right in realiena is a right one has in the property owned by another. It is also called as encumbrance.

Further it is possible for one encumbrance for being itself subject to another e.g. A tenant may sublet. By doing so he confers on the sublessee a right in realiena of which the immediate subject matter is itself merely another right of the same quality.

There are four kinds of encumbrances:
(a) Easement (b) Securities (c) Lease (d) Trust

5. **Proprietory and Personal Rights**

The rights of a person concerning his property (Corporeal or Incorporeal) are called proprietory rights. The rights in regard to a person's status are called personal rights. Thus a person's proprietory rights constitute his estate, his assets. A person has proprietory rights in his house, car, lands, etc.

Proprietary rights are those which have an economic significance or value while rights of status on the other hand, are personal rights as no primary value can be set upon them.

6. **Ordinary rights and fundamental rights**

The constitution of India has conferred certain rights called fundamental rights. While an ordinary right may be modified or abrogated by legislative action, fundamental rights are immune from such interference.

7. **Legal and Equitable Rights**

In England, there were formerly two system of law. One system of law was administered by common law and rights which were recognised by the courts of common law were known as legal rights.

The other system of law was administered by the court of Chancery and right recognised by this court were known as Equitable rights.

The Judicature Act of 1878 led to the fusion of law and equity but distinction still remains in as much as the Act has not abolished anyone of the two system, but has made these consistent with each other by throwing overboard those rules of common law, which were inconsistent with the rules of equity.

Difference between Legal and Equitable Rights

They differ in methods of their creation and disposition and in their efficacy. Thus, a legal mortgage of a land has to necessarily be created by a mortgage deed, while an equitable mortgage can be created by a written agreement or by a mere deposit of title deed.

Again, legal rights are more efficacious while equitable rights have a more precarious existence. Thus where there are two inconsistent legal rights claimed adversely by different persons over the same thing, the maxim **"Qui priorest tempore, Potiorest jure"** comes into play. In other words the first in time will prevail. The same rule is applicable in the case of the two inconsistent equitable rights. However in the case of a conflict between a legal right and equitable right, the legal right will prevail over the equitable right even though such legal right may be subsequent to the equitable right, provided that the holder of the legal right has acquired it for value and without notice of the prior equitable rights. Hence, legal rights are superior to equitable rights.

Position in India

In India both common law and equity jurisdiction are vested in courts which act according to justice, equity and good conscience". But there are as such no division of courts.

8. **Principal and Accessory Rights**

A principal right is the main or primary right vested in a person. A supplementary right is one which is appurtenant to principle right and called the accessory right.

Thus, accessory right is a supplementary right which is added to or arises out of the principal right. The legal maxim is **'accessorium sequitur principal'** *i.e.* the accessory right follows the principal. Thus rent and covenants of a lease are accessory to land lord's ownership of the property.

9. **Primary and Secondary Rights**

A secondary right originates from the violation of another right, while primary rights have some source other than wrongs e.g. if A enters into a valid contract with B. A's right to fulfillment of the contract is termed as primary right. If the contract is violated A's right to damage for breach of contract is secondary right.

Primary right – right in rem or right in personam
Secondary right – right in personam

10. **Antecedent Rights (primary/Principal) and Remedial Rights (secondary/accessory)** - Pollock says that antecedent rights are substantive rights and remedial rights are adjective rights. (Same as Primary and Secondary rights)
    - Law is not only constraint but is creative also.

11. **Vested/contingent rights (non-transferable and non-heritable)**

Vested rights – already perfected and can be enforced.
Contingent rights are not enforceable as yet; they are dependent upon some conditions being fulfilled. Once the conditions are fulfilled, they become vested rights.

Duty