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concept. this implies  
that

[Psychology](#), [Behaviorism](#)



A " person" in a non-legal way is understood as any human being who possesses a certain kind of personality. This personality is nothing but the cumulation of certain characteristics like, power of speech, thought and choice that belong to themankind. Thus, going by the same logic, all those who are not endowed with such attributes and are deprived of the power of reason and choice may be described as being less than persons. In a legal perspective, everything concerns itself with the establishment of the right-duty concept. This implies that since rights and duties involve exercising of the liberty to choose and since human beings are inherently capable of choosing, hence they can be called as persons. Yet, there exists an exception of slaves.

They were not considered as persons but mere property, implying that any action against the slaves would be considered as an action against the property. Therefore, an important question that arises here is that, who decides the " capability" of holding rights and duties? It is often regarded that, law assumes such a position in the society thus, laying down that whatever law deems capable of holding rights, attributes it to be a person, becomes a person. This could mean that if law, wanted to personify a river per se, it could do so by attributing certain personal characteristics to it and thereby making rivers, persons in the eyes of law. If slaves being humans were considered to be less than persons, then the question of dead people becomes very obvious. Hence, it becomes necessary to analyse the legal status of dead men, as to what happens to their legal personality that they possess when they are alive, once dead. Then comes another important question of dead men.

If personality i. e., having certain characteristics such as the power to think and reason, becomes an important aspect of identifying any human being as a person, where do dead people come under this broad categorization of persons and non-persons. And if law is concerned with rights and duties (both of which involve a notion of choice), very evidently and given that dead people cannot choose for the very obvious reason of not being alive, hence not having the power to reason.

Does this render them incapable of having a legal status? All of this directly implies in the simplest of terms that because dead people do not possess the power of speech, thought and choice and legally they do not have any rights or duties (due to absence of choice), they are no longer persons in the eyes of law. The understanding behind dead men not being persons in the eyes of law can be simplified by stating that the personality of a human being commences at the time of birth and ceases to exist at the time of death. Hence, in legal perspective, the legal personality of a person dies with the person thereby depriving him of his rights as well as his liabilities. Dead men, under the law are given no rights because it is presumed that they no longer have an interest.

This throws light on the concept of "interest theory". According to Wesley Hohfeld rights must belong to persons and not things. But due to his failure to discuss the necessary and sufficient characteristics of right-holders, it remains unclear as to whether a Hohfeldian right-holder was concerned about moral rights, legal rights, or both. Thus, the Will and Interest Theory emerged. Will theory states that the essence of a right consists in

opportunities for the right-holder to make normatively significant choices relating to the behavior of someone else.

More specifically, a will theorist asserts that the function of a right is to give its holder control over another's duty. In Hohfeldian terms, will theorists assert that every right includes a Hohfeldian power over a claim. In other words, will theorists believe that all rights confer control over others' duties to act in particular ways. Because the dead are incapable of making significant choices and lack the ability to form interests, a Will Theorist would argue that the dead cannot be right-holders. According to a Will Theorist, laws appearing to grant the dead posthumous rights are really aimed at controlling the behavior of living persons. Hence, it can be said that according to Will Theory, all the rights of a dead person like, the right to a decent burial, rights granted for reputation and estate are granted not because of any heed to the interests of the dead but keeping in mind the interest of the society at large and especially that of the living heirs.

Interest Theory on the other hand states that a person can be a legal right holder if he has interest even though he is unable to express it. Interest theorists maintain that the function of a right is to further the right-holder's interests. An owner has a right, according to the interest theorist, not because owners have choices, but because the ownership makes owners better off. Hence, according to this theory, even the dead must have legal rights and mustn't be deprived of their rights just because of their inability to express the same. Theoretically someone could die with a certain set of interests written in a document, perhaps a will. Interest Theorists make few

suggestions about which surviving interests should be recognized as posthumous legal rights.

The law, even though does not confer rights upon the dead, it does take into account his desires and interest expressed while he was still alive. The law takes notice of these three things belonging to a dead person, namely, his body, his reputation and his estate. Within the will theory there can be no such thing as an unwaivable right: a right over which its holder has no power. Within the will theory it is impossible for incompetents like infants, animals, and comatose adults to have rights. The interest theory is more capacious than the will theory.

It can accept as rights both unwaivable rights (the possession of which may be good for their holders) and the rights of incompetents (who have interests that rights can protect). The interest theory also taps into the deeply plausible connection between holding rights and being better off. A corpse is a property of nobody. Even though a corpse cannot be disposed-off through a will or even mishandling the body does not amount to any offence but there exists a law that gives a legal right to burial of a dead body. Hence, the law does touch upon certain interests of the dead if not entirely granting them their right.

When it comes to the reputation of a dead person, it seems as though law provides adequate protection against libel of a dead person. But upon a closer look at the legislation, it becomes evident that, the law protecting a dead man's reputation is in fact for the living heirs of the person and can be used as a defense only if it proves to be an attack on the living people. While

dwelling upon the aspect of inheritance of a dead man's property, there can be two ways i. e., testamentary and intestate succession. The law interferes in both of these aspects as, in testamentary succession the will that is made by the dead person is required to be followed to devolve his property and in intestate succession, where there exists no will, the law interferes to take care of the property of the deceased. The interest in a dead person's body has long been recognized as a duty of the living although the nature of this interest.

In modern times this duty is present if for no other reason than the protection of the living. However, the duty to bury is imposed by law. If there is such a duty to bury the dead that duty must be placed upon someone. We must, therefore, assume, that where there is a duty to bury the dead there also must be a right to take possession of the body for the execution of the duty and that any interference with this right might be redressed by an action at law. The fact that whoever has dominion over a dead person's body should have some rights - and if he has exclusive rights for purposes of burial and protection of the body, these rights should be protected even if by a quasi-property right.

Therefore, since the dead body is not real estate, as yet, nor attached to it, we must treat it as personal property. Now that it is definitely established that a right to burial exists and is a legal right protected by the courts. It is a fundamental legal concept that where there is a right there is a corresponding duty; the quasi-property right which - entitles the heirs and survivors to the possession of the dead body is limited to the extent of the

duty arising from sentiment and reverence to the memory of the deceased. Therefore the heirs or survivors entitled to possession of the dead body are responsible for a decent burial, and an action will lie against the heir or survivor, to whom a dead body is delivered for safekeeping, who fails to perform his duty. Now, that we have established the nature of the interest in the dead human body and found that those who are his legitimate heirs inherit duties and their accompanying legal rights, insofar as burial is concerned, we are faced with the problem that the deceased may have affected these interests and rights by his action prior to death, as to the disposition of his remains.