

The Hohfeldian analysis of rights philosophy essay



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The concept of analyzing legal rights in a broader sense was given by Professor Wesley Newcomb Hohfeld. Professor Hohfeld was born in 1879. He graduated in 1901 from the University of California and moved to Harvard Law School. There, he served in the capacity of editor of Harvard Law Review and graduated with honors in 1904. Professor Hohfeld then taught from 1905-1913 at Stanford Law School. Later in his career, he shifted to Yale Law School. He taught at the prestigious law school until his demise in 1918[1].

Professor Hohfeld has contributed significantly to the field of Jurisprudence. He attempted to simplify the term right by creating an analysis that separates various core concepts in law. These core concepts were then shown to be inter-related and a framework of such relationships was construed. The analysis of the connectivity in relationships can shed light on implications of policy and decision making. Thus, his work has permitted the deconstruction of legal principles into individual elements[2].

Professor Hohfeld has propounded that the different meanings of the term right are often conflated in a single sentence. In any given sentence, the usage is switched several times. This lack of precision in the language subsequently indicates a lack of precision in thought and the conclusions that are derived in turn. His efforts to facilitate reasoning led him to break the meaning of rights into eight unique concepts. These terms are defined with respect to one another to eliminate the presence of any ambiguity. Four pairs of opposites and correlatives are said to exist as illustrated below[3].

Jural Opposites comprise of the following:

1. Right/No-Right

2. Privilege/Duty

3. Power/Disability

4. Immunity/Liability

Jural Correlatives are mainly constituted by:

1. Right/Duty

2. Privilege/No-Right

3. Power/Liability

4. Immunity/Disability

RIGHTS AND DUTIES

What is a right? A right can be defined as an interest recognized, protected and enforced by law. Justice Strong has held “ The word ‘ right’ is defined by lexicographers to denote, among other things, property, interest, power, prerogative, immunity, privilege (Walker’s Dict. word ‘ Right’). In law it is most frequently applied to property in its restricted sense, but it is often used to designate power, prerogative, and privilege,...”[4]

Justice Jackson[5] further states “ The words ‘ right’ or ‘ privilege’ have, of course, a variety of meanings, according to the connection or context in which they are used. Their definition, are given by standard lexicographers, include ‘ that which one has a legal claim to do’, ‘ legal power’, ‘ authority,’ ‘ immunity granted by authority’, ‘ the investiture with special or peculiar rights’.”

A man has several rights over both tangible as well as intangible objects. He also possesses rights as a person such as the right to enjoy a certain reputation, the right to not be assaulted or injured, rights in a domestic environment and rights that are related to other rights e. g. contractual rights. Certain other rights of a contractual nature may also exist such as those rendered for service e. g. master and servant, doctor and patient. Rights over intangible objects would include copyrights, patents, trademarks etc. Thus, rights can be considered as advantages or benefits that are conferred by law[6].

Rights can be divided into 4 different kinds:

Rights in the strict sense

Liberties

Powers

Immunities

The correlatives of each of these rights are illustrated below:

Duties

No-Rights

Liabilities

Disabilities

Each and every right has a corresponding duty. Duty may be defined as an internal feeling of an obligation towards someone. “ A duty or a legal obligation is that which one ought or ought not to do. ‘ Duty’ and ‘ right’ are correlative terms. When a right is invaded, a duty is violated.”[7] Rights and duties are like ‘ 2 sides of a coin’ and always go hand in hand. Thus, right and duty are correlative. This implies that if X enjoys a right against Y, then Y is duty bound to respect this right. Rights in the strict sense can therefore, be held to be benefits, which are derived from duties imposed upon others[8]. Several different kinds of rights exist. These are elucidated below.

The first classification is that of perfect rights and perfect duties. Rights which go along with perfect duties are known as perfect rights and perfect duties are those which not only possess legal recognition but are also, strictly enforceable. Thus, a breach would constitute some action or prosecution and the State may use reasonable force if necessary[9].

However, both rights and duties fall short of this perfect system[10]. Some examples of imperfect legal rights would include time barred claims, claims that cannot be enforced due to lack of proof, certain claims against states etc. While in all these cases, there is no cause of action yet legal recognition still exists. The principle of ‘ ubi jus ibi remedium’ which means where there is a right, there is a remedy, serves an exception to imperfect rights[11].

The second category is that of positive and negative rights. The correlative of these rights are positive and negative duties and acts performed by those in whom the duty vests determine the nature of the right. A positive act

relates to a positive right whereas any abstinence from it would constitute a negative right[12].

A third distinction is made between 'rights in rem' and 'rights in personam'. Both these terms have been derived from civil law[13]. A 'right in rem' is a right that exists against the entire world whereas a 'right in personam' is against a specific individual. The right to spend my money from my wallet is a 'right in rem' but the right to recover it from a debtor is a 'right in personam'. Similarly, the right to exclusive enjoyment of my apartment is a 'right in rem' whereas upon the lease of the same apartment, only a 'right in personam' would exist against the leasee. 'Rights in rem' are considered as negative rights whereas 'rights in personam' are usually positive in nature[14].

'Rights in personam' are predominantly derived from the existence of personal relations whereas 'rights in rem' offer a relation between the owner and a plethora of individuals. Thus, 'rights in personam' are held to be 'paucital rights' and 'rights in rem' are 'multital rights'. A contractual right is a 'paucital right' as it is specifically enforceable only between the parties entering into a contract. A property right, on the other hand, is a 'multital right' as the person has a right to exclude any and every individual. In essence, it can be said that 'multital rights' are constituted by several, separate yet identical 'paucital rights'[15].

Proprietary and personal rights form the fourth category. The former is concerned with value while the latter is not. Value, in the case of proprietary rights, is derived from assets, estate, property and so forth. Rights,

therefore, which are proprietary in nature deal with monetary or economic value. On the contrary, personal rights are associated with status, reputation and welfare[16]. Right of not being inflicted with harm and rights in respect of domestic relationships can be called as personal rights[17].

Rights are also divided into 'jura in re propria' and 'jura in re aliena'. A right 'in re aliena', also termed as an encumbrance, is one which detracts from another in reference to a subject. Thus, the right is limited in its ambit with respect to the superior right. For instance, a landlord's right to use the property temporarily may be restricted by a tenant. The 4 main classes that constitute 'jura in re aliena' are servitudes, trusts, securities and leases. All other rights fall in the domain of 'jura in re propria'[18].

A property owner has a 'jus in re propria' i. e. a right over the property owned while a pledgee possesses a 'jus in re aliena' i. e. a right over another person's property. A right is known as 'servient' when it is subject to an encumbrance whereas the encumbrance derived is called 'dominant'[19]. By subletting a property, the sublessee is conferred with a 'jus in re aliena' by the tenant. Thus, the right of the tenant is 'servient' with respect to the sublessee but 'dominant' as against the landlord[20].

'Servient' and 'dominant' rights are concomitant and may vary in their degree of coexistence. Leases, mortgages and easements are examples of the same. An opposite relationship is observed in the case of principal and accessory rights[21].

LIBERTY AND NO-RIGHTS

Liberty is defined as the exercise of a right without the interference of law.

To say that A has liberty means that A can do all that pleases because there exists no duty to refrain and at the same time, no one else can prohibit X from exercising liberty. There exists a relationship between all individuals that is woven together and held in a matrix. By collectively adding all the rights and duties across relationships, the extent and degree of liberty can be determined. The classic example of perfect liberty is one where no one has any exclusive right to prevent the occurrence of a given act[22].

Legal liberty encompasses a sphere within which the law leaves the individual alone. Liberty, however, does not mean interference with another e. g. liberty to voice opinion on public affairs does not grant a person the right to publish defamation. Similarly, one has the liberty to self-defense against violence but no right is conferred to engage in revenge against someone who has caused the injury. “ A man has a perfect right to fire off a gun, means, apparently, that a man has a freedom or liberty to fire of a gun, so long as he does not violate or infringe anyone’s rights in doing so, which is very different thing from a right, the violation or disturbance of which can be remedied or prevented by legal process.”[23]

In *Quinn v. Leatham*[24], Lord Lindley has stated “ The plaintiff had the ordinary rights of the British subject. He was at liberty to earn his living in his own way, provided he did not violate some law prohibiting him from so doing, and provided he did not infringe the rights of other people. This liberty involved the liberty to deal with other persons who were willing to deal with him. This liberty is a right recognised by law; its correlative is the general

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duty of every one not to prevent the free exercise of this liberty or right to deal with others is nugatory unless they are at liberty to deal with him if they choose to do so. Any interference with their liberty to deal with him affects him.”

Liberty is therefore, the exercise of unrestrained activity permitted under law. The primary difference between liberty and rights in strict sense is that things I may do for myself are classified as liberty whereas things which others ought to do in my respect are classified as rights in strict sense[25].

Legal liberty is considered as a legal right where any interference by other persons is not justified. During the expression of one’s opinions, it can be stated that other persons are legally duty bound not to curtail them.

However, there exist liberties which do not enjoy the company of rights of a protective nature. Thus, a landowner, who gives a license to trespass his property, can exercise an equal right to prevent the usage of his property as much as the liberty conferred by the license granted by him. The license basically serves the purpose of making an unlawful act lawful. In *Clifford v. O’Neill*[26], the Court held “ A license is merely a permission to do an act which, without such permission, would amount to a trespass...nor will the continuous enjoyment of the privilege conferred, for any period of time cause it to ripen into a tangible interest in the land affected”.

Similarly, a trustee has the liberty to ask for compensation from the estate’s beneficiaries for administration purposes. But the beneficiaries are under no duty or obligation to provide him with the same. Yet another example is that a foreigner has the liberty to enter any country of his choice but the

government can exercise an equal right to prevent the individual from entering. Thus, rights when classified as liberties aid in elucidating the meaning of law[27].

No-right is the correlative of liberty and consequently, of no duty. It is actually a word that has been coined indicating the absence of a right. The term 'no-right' basically implies that a certain person does not have a right against another individual in a particular respect. The evolution of this term is said to have taken place in a negative context. So, if X has the liberty to undertake a particular act, it means that Y has no-right to say that the act will not be done e. g. a trespasser has no-right to be removed with force suggesting that the occupier has complete liberty of ejection[28].

Another example that can be considered in the same light is that of an alien who has no duty not to enter a foreign country i. e. he has liberty to enter. By the same token, the authorities have a no-right against him i. e. they may not have any right in the strict sense though they may still possess a liberty to refrain him from entering. Cases in tort that are principally of 'Damnum Sine Injuria' in nature i. e. inurrence of some damage without the violation of a legal right are entirely no-right situations[29].

POWERS AND LIABILITIES

Yet another classification of legal rights can be seen in the form of powers. Several examples of powers exist. A few to name are the power to make a will, the power to sell a property if the mortgagee does not receive back the mortgage money from the mortgagor, the right of re-entry that is possessed by a landlord, the power to revoke a contract for fraud, the power to take

legal action against someone, the power to punish and arraign, the power to appoint officials for fulfilling functions, the right to issue an execution in respect of a certain judgement and other such powers vested in the judiciary to meet the ends of justice[30].

Powers constitute interests that are legally recognized. If one possesses power, one possesses the ability to change by one's own will, the liabilities, duties, rights and any other relations of oneself or with respect to other individuals[31].

Powers owe some resemblance to liberties although they differ in the aspect that the act so performed need not be innocent. The power to create a will does not imply that no wrong is done in the process. It does not mean that a will is made innocently, it simply implies that a right to create an effective will subsists. In a similar light, if a landlord possesses the right to re-enter his property, it does not mean that no wrong is committed but if such an act is committed, it does imply that the lease is effectively terminated[32].

Powers and rights in the strict sense can also be differentiated. In the latter case, a corresponding duty always coexists whereas this is absent in the former case. An example of the same is that the right to create a will does not result in a corresponding obligation for someone else. Similarly, one can see that the power to sell the mortgagor's property by a mortgagee does not create an obligation on the mortgagor to pay back the mortgage money. It does, however, confer the right on the mortgagee to receive back the sum given as a debt to the mortgagor. A debt and an action to recover money fall under two different categories. While the first case can be classified as a

right in the strict sense which would correspond to a duty to repay, the latter is an example of a power given by law that imposes a liability and consequently, results in the institution of legal proceedings[33].

Powers can be classified based on the domains in which they are exercised. Hence, powers can be categorized as either private or public. Private powers are exercised by individuals with respect to themselves. Public powers, on the other hand, lie with state agencies or instruments that carry out public functions. Examples include powers exercised by the judiciary, legislature and executive[34].

Power helps to determine legal relations and thus, gives rise to either 'authority' or 'capacity'. The term 'authority' is defined as the exertion of power over others whereas 'capacity' is defined as the power exerted over oneself[35].

Liability of an individual arises when power is vested in another. It can broadly be defined as the alteration of a person's legal rights by the person who exercises power. A few examples that illustrate this concept are the determination of a lease by reentry of the landlord that places a liability on the tenant, liability of a disloyal partner to seek divorce, one against whom a judgement has been passed is liable to have a decree of execution issued and the liability of a mortgagor that arises from the sale of the property by a mortgagee in the event of non-payment of the loan advanced[36].

Liability is unconcerned with the fruitful or unfruitful result in any given case. It is inherent in nature and bears no relation with any duty to pay compensation. For instance, a person committing a tort is duty bound to pay <https://assignbuster.com/the-hohfeldian-analysis-of-rights-philosophy-essay/>

compensation and is liable for an action to be brought against him/her as well. However, someone who is not a tortfeasor is not under any duty to pay compensation but is equally liable for an action to be instituted, that in all probability will fail, as no grounds exist. Similarly, a statute in Virginia provided " that all free white male persons who are twenty-one years of age and not over sixty, shall be liable to serve as jurors except as hereinafter provided." [37] This enactment resulted in the imposition of a liability and not a duty.

Liability is said to be harmonious in nature with no-right. If a tenant's goods are seized for non-payment of rent, he has no-right not to allow his supplies to be handled by the landlord and at the same time, the liability to secure and sell the merchandise against his pleasure also remains in effect [38].

Liability can also be seen as an advantage or benefit. A person who professes to transfer his property as a gift through the exercise of power, the person entitled to the gift has a liability to receive it. While referring to a gift causa mortis and the liability of the donee to have his gift revoked, Justice Smith has said:

" The title to the gift causa mortis passed by the delivery, defeasible only in the lifetime of the donor, and his death perfects the title in the donee by terminating the donor's right of power of defeasance. The property passes from the donor to the donee directly...and after his death it is liable to be divested only in favor of the donor's creditors.... His right and power ceased with his death." [39]

IMMUNITIES AND DISABILITIES

Another category of rights is immunity from legal power. Immunity grants an exception to change any legal relations. The right of an individual to be tried by members of society of equal standing creates an exclusion from being tried by a jury. The relationship between immunity and power is identical to that of liberty and right in the strict sense. Immunity implies a complete lack of liability[40].

Cases of immunity from taxation are well documented in the U. S. In *Phoenix Ins. v. Tennessee*[41], Justice Peckham stated the following:

“ In granting to the De Soto Company ‘ all the right, privileges, and immunities’ of the Bluff City Company, all words are used which could be regarded as necessary to carry the exemption from taxation possessed by the Bluff City Company; while in the next following grant, that of the character of the plaintiff in error, the word ‘ immunity’ is omitted. Is there any meaning to be attached to that omission, and if so, what? We think some meaning is to be attached to it. The word ‘ immunity’ express more clearly and definitely an intention to include therein an exemption from taxation than does either of the other words. Exemption from taxation is more accurately described as an ‘ immunity’ than as a privilege, although it is not be denied that the latter word may sometimes and under some circumstances include such exemptions.”

Disability, the correlative of immunity, is better known as inability and signifies the absence of power. The legal maxim ‘ *Nemo dat quod non habet*’

which means that no person can transfer a better title in property than what is possessed by oneself, is an expression of disability[42].

SUMMARY

In conclusion, 4 independent, unique and distinct classes of rights are guaranteed by law. These are rights in the strict sense, where law restricts others in my respect; liberty, which permits a reasonable degree of freedom to pursue uninterrupted and unrestrained activity; power, that gives a right to execute an action effectively and immunity, which creates an exemption from being subjected to a power. A right in the strict sense imposes a duty on others, a liberty allows an action to be performed innocently, a power confers the right to accomplish effectively and an immunity denies others the right to exercise power effectively in my respect[43].

Correlatives are related vertically and read as " is the presence of in another". Thus, duty is the presence of right in another and power is the presence of liability in another.

Diagonal relationships indicate jural contradictories and are read as " is the absence of in oneself". Thus, liberty is the absence of duty in oneself and immunity is the absence of liability in oneself.

The contradictions of jural correlatives are connected by horizontal arrows and can be read either way as " is the absence of in another". Thus, no-right is the absence of duty in another and disability is the absence of liability in another[44].