

Hohfeldian Model and its Present Relevance

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Abstract: *A reader who undertakes to read any legal treatise or the opinion of any court is likely to realize that the sentences in either of them bristle with rights and duties, powers, privileges, liabilities and immunities. He will gradually realize also that these terms are frequently used loosely, each term often being used to express several distinct concepts and he will find that our dictionaries merely record this wide and variable usage and aid little toward the clear expression essential to exact reasoning. In an attempt to clarify legal thinking, the Late Professor Wesley Newcomb Hohfeld defined eight basic jural relations, which he called the basic constituents of every complex legal relationship, which the law must deal with. This report, in paying homage to Hohfeld, describes Hohfeld's eight jural relations and their interrelationships. This report also dwells on works of scholars who have amplified Hohfeld's work more particularly in works that have expressed Hohfeld's classification as deontic and alethic relations and as a cube with proof of its logical validity.*

Keywords: *legal treatise*

I. INTRODUCTION

Wesley Newcomb Hohfeld's article titled 'Some Fundamental Conceptions as Applied in Judicial Reasoning'¹ published in 1913 in the Yale Law Journal is regarded by some scholars as one of the greatest contribution to the science of law as is demonstrated by the sheer number of law review works that cite² his article. Hohfeld, who primarily intended this article for law students more than any other class of readers, revealed that his main purpose in this article was to emphasize certain oft-neglected matters that may aid in the understanding and in the solution of practical, everyday problems of law³. He postulated that there are certain legal elements that manifest themselves in every legal interest – he called them the basic conceptions of law⁴. He promoted the idea that the understanding of the diverse legal interests could be simplified if the fundamental conceptions involved in them were first analyzed and discriminated⁵.

Hohfeld's Fundamental Jural Relations

An operative fact is any fact whose existence or occurrence will cause new legal relations between persons⁶. A rule of law that has been reduced to words is a statement of the legal effect of operative facts; i.e., it is a statement that certain facts will normally be followed by certain immediate or remote consequences in the form of action or non-action by the judicial and executive agents of the society. Whenever any such operative facts exist, the persons who will be affected

¹ Wesley Newcomb Hohfeld, Some Fundamental Legal Conceptions as Applied in Judicial Reasoning, 23 Yale L.J. 16, 59 (1913-1914)

² Fred R. Shapiro, The Most-Cited Articles from the Yale Law Journal, 100 Yale L.J. 1449, 1514 (1991)

³ Hohfeld, *supra* note 1, at 20

⁴ *Id.* at 20

⁵ *Id.* at 19

⁶ *Id.* at 25



by the stated consequences are said to have a legal relation each to the other⁷. We apply rules of law to predict the conduct of societal agents in response to an operative fact. Our relations to our fellow men, in respect of the expected action of societal agents are commonly called legal or jural relations⁸. Hohfeld set forth eight fundamental conceptions in terms of which he believed all legal problems could be stated and arranged them in the following way⁹.

Jural Opposites	Right	Privilege	Power	Immunity
	No Right	Duty	Disability	Liability
Jural Correlatives	Right	Privilege	Power	Immunity
	Duty	No-Right	Liability	Disability

The terms found in the above scheme, with the exception of ‘no-right’ had already been in usage in the works of writers of jurisprudence. However, the meanings assigned to these terms were not always the same as the ones Hohfeld assigned to them¹⁰. For instance, as Hohfeld notes, the term ‘rights’ tended to be used indiscriminately to cover what in a given case may be a privilege, a power or immunity rather than a right in the strictest sense and this looseness of usage was occasionally recognized by the authorities¹¹.

Hohfeld proposed that the term ‘right’ should be restricted to claims for which one could identify a correlative duty on the part of another¹². A right signifies one’s affirmative claim against another¹³. A ‘duty’ or a legal obligation is that which one ought or ought not to do. When a right is invaded, a duty is violated¹⁴. ‘Privilege’ is one’s freedom from the right or claim of another. It denotes an absence of duty and therefore its correlative must denote an absence of right. Hohfeld coined the term ‘no-right’ to express this correlative of privilege, as there was no term in general use to express the same¹⁵. ‘Power’ and its correlative ‘liability’ are legal relations between two persons where the person having the power, can by his voluntary act alter the legal relations of the other person, who has the liability of having his legal relations altered by the person having the power¹⁶. An ‘immunity’ is one’s freedom or exemption from the legal power or control of another¹⁷. Immunity in Hohfeld’s system is a generic term used to describe a legal situation in which a given legal relation vested in one person cannot be changed by the acts of another person. Correlatively, the one who lacks the power to alter the first person’s legal relations is said to be under a ‘disability’¹⁸.

⁷ Arthur L. Corbin, Legal Analysis and Terminology, 29 Yale L.J. 163, 173 (1919-1920); Albert Kocourek, Non--Legal--Content Relations, 4 Ill. L. Q. 233, 239 (1922); Arthur L. Corbin, What is a Legal Relation, 5 Ill. L. Q. 50, 52 (1922)

⁸ Arthur L. Corbin, Jural Relations and Their Classification, 30 Yale L.J. 226, 238 (1920-1921)

⁹ Hohfeld, *supra* note 1, at 30

¹⁰ Walter Wheeler Cook, Hohfeld’s Contributions to the Science of Law, 28 Yale L.J. 721, 738 (1918-1919)

¹¹ Hohfeld, *supra* note 1, at 30

¹² Michael K. Addo, Does Hohfeld Still Matter , 29 B. L. J. 7, 12 (1997)

¹³ Walter Wheeler Cook, *supra* note 10, at 724

¹⁴ Hohfeld, *supra* note 1, at 32

¹⁵ Walter Wheeler Cook, *supra* note 10, at 725

¹⁶ Hohfeld, *supra* note 1, at 44-54

¹⁷ *Id.* at 55

¹⁸ Walter Wheeler Cook, *supra* note 10, at 726-727



Some scholars¹⁹ have assigned formal definitions to Hohfeld's eight jural relations in reference to two given persons A and B.

Right. An enforceable claim to performance (action or forbearance) by another. It is the legal relation of A to B when society commands action or forbearance by B and will at the instance of A in some manner penalize disobedience.

Duty. It is the legal relation of a person, B, who is commanded by society to act or to forbear for the benefit of another person, A, either immediately or in the future, and who will be penalized by society for disobedience.

Privilege. The legal relation of A to B when A (with respect to B) is free or at liberty to conduct himself in a certain manner for the benefit of B by the command of society; and when he is not threatened with any penalty for disobedience, for the reason that society has made no command.

No-right. The legal relation of a person (A) in whose behalf society commands nothing of another (B).

Power. The legal relation of A to B when A's own voluntary act will cause new legal relations either between B and A or between B and a third person.

Liability. The relation of A to B when A may be brought into new legal relations by the voluntary act of B.

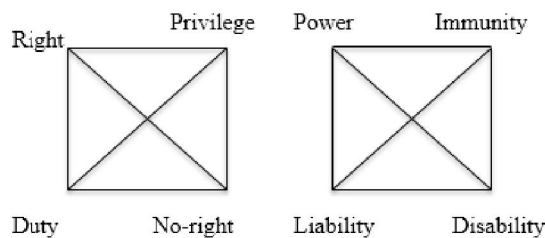
Immunity. The relation of A to B when B has no legal power . . . to affect some one or more of the existing legal relations of A. As to that particular existing relation A has an immunity with respect to B.

Disability. The relation of A to B when by no voluntary act of his own can A extinguish one (or more) of the existing legal relations of B.

Hohfeld termed these eight conceptions, the lowest common denominators of law – the lowest generic conceptions to which any and all legal quantities may be reduced²⁰.

Hohfeldian scheme expressed as Deontic and Alethic Relations

Attempts²¹ have been made to arrange the eight fundamental jural conceptions into the deontic and alethic relations in the following way.



Deontic and Alethic Squares

¹⁹ Corbin, *supra* note 7; Mark Andrews, Hohfeld's Cube, 16 Akron L. Rev. 471, 486 (1983)

²⁰ Hohfeld, *supra* note 1, at 58-59

²¹ Glanville Williams, The Concept of Legal Liberty, 56 Colum. L. Rev. 1129, 1150 (1956); Andrew Halpin, Rights and Law, Analysis and Theory (1997)

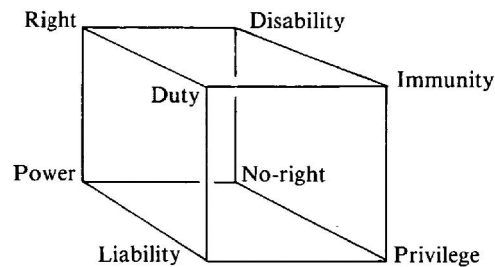


In the above scheme, the vertical arrows connect jural correlatives and may be read as right is the presence of duty in another and liability is the presence of power in another. The diagonal arrows connect the jural opposites or jural contradictories and may be read as no-right is the absence of right in oneself and disability is the absence of power in oneself. The horizontal arrows connect the contradictories of correlatives and may be read as privilege is the absence of right in another and immunity is the absence of power in another²².

The Alethic relationship can be explained in reference to the mortgagor's right to redeem and the mortgagee's right to foreclose²³ the mortgaged property. A mortgagor has a non-waivable right of redemption, which can be exercised at any time after the principal money has become due. At this stage, the mortgagor is in a situation where he can alter the legal position of the mortgagee. In Hohfeldian terms, the mortgagor is in a position of power and the mortgagee is in the position of liability. Their positions undergo a change if the mortgagee obtains a decree that the mortgagor be absolutely debarred of his right to redeem the property; i.e., a foreclosure decree. Now the mortgagor's position is one where he has no power to affect the position of the mortgagee in regard to the mortgaged property. In Hohfeldian terms, the mortgagee is in the position of immunity and the mortgagor is in the position of disability.

Hohfeld's Cube and its Logical Validity

Attempts have been made to represent Hohfeld's eight jural relations as a cube²⁴ and in symbolic logic²⁵.



In the above cube, right, power, disability and no-right are placed on one side (the A side) of the cube and duty, immunity, liability and privilege are placed on the other side (the B side) of the cube. First, right is placed arbitrarily on one corner and duty is placed on the corresponding corner. Privilege, being the opposite of duty and bearing no direct relation to right, it is placed on the diagonal on the same side of duty. No right, being the correlative of privilege and the opposite of right, it is placed on the corresponding corner to privilege on the A side of the cube and diagonal on the same side of right. In placing the four other jural relations, reference is made to Hohfeld's work where he notes that right is related to privilege as power is related to immunity²⁶. Hohfeld's work suggests that power accompanies a

²² P J Fitzgerald, Salmond on Jurisprudence (2004)

²³ David M. Madway, A Mortgage Foreclosure Primer, 8 Clearinghouse Rev. 146, 181 (1974); Also see Sections 60 and 67 of the Transfer of Property Act 1882

²⁴ Mark Andrews, *supra* note 19, at 474-478

²⁵ Alan Ross Anderson, The Logic of Hohfeldian Propositions, 33 U. Pitt. L. Rev. 29, 38 (1971); Philip Mullock, Holmes on Contractual Duty, 33 U. Pitt. L. Rev. 471, 482 (1972); John P. Finan, Presumptions and Modal Logic: A Hohfeldian Approach, 13 Akron L. Rev. 19, 32 (1979)

²⁶ Hohfeld, *supra* note 1, at 55



right²⁷; i.e., that right is the broader idea implying the existence of a power and that it is a liability to have a duty created²⁸ – that the notion of duty includes the idea that a given duty can be created out of a liability. Thus power is placed below right on the A side and liability is placed below duty on the B-side. Power and liability are now on the corresponding corners indicating their correlative relation²⁹. Since power is related to immunity as right is related to privilege, immunity is placed above privilege on the B side thus on the opposite end of the long diagonal through the middle from power thus indicating similar contrast as the right-privilege relation in the cube. Disability, being the correlative of immunity, it is placed on the corresponding corner from immunity on the A side³⁰.

Attempts³¹ have been made to prove the validity of the above cube in symbolic logic, by considering the jural relations in the A side and on the B side of the cube as corresponding squares of opposition. For this purpose, three factors are introduced the ‘agent’, the ‘patient’ and the ‘state of affairs’ denoted symbolically as x , y and p respectively. The actor is the agent, the person who is the recipient of the action is the patient and the state of affairs is the situation, which the agent is said to bring about relatively to the patient³².

Two other symbols ‘O’ and ‘H’ are introduced to show the relationship of the units x , y and p and between each other. The symbol ‘O’ indicates that the relation between x and y is obligatory and its negation ‘O’ indicates that the relation between x and y is not obligatory; i.e., permissive. The symbol ‘H’ governs the state of affairs. A simple H indicates that the agent will do p for the patient, or that the agent will create p for the patient. The negation H indicates that the agent will not do p , or that the agent will not create p .

Finally the symbol (x, p, y) indicates that x is the agent and y is the patient and the symbol $(\underline{x}, \underline{p}, \underline{y})$ indicates that the reverse; i.e., that y is the agent and x is the patient. The eight jural relations are symbolized as follows.

Right	$O H (x, p, y)$
Duty	$O \underline{H} (\underline{x}, \underline{p}, \underline{y})$
Disability	$O \underline{H} (\underline{x}, \underline{p}, \underline{y})$
Immunity	$O \underline{H} (\underline{x}, \underline{p}, \underline{y})$
Power	$\underline{O} H (x, p, y)$
Liability	$\underline{O} \underline{H} (\underline{x}, \underline{p}, \underline{y})$
No-right	$\underline{O} \underline{H} (\underline{x}, \underline{p}, \underline{y})$
Privilege	$\underline{O} \underline{H} (\underline{x}, \underline{p}, \underline{y})$

A Square of Opposition is a collection of theses embodied in a square diagram, generally used by logicians to represent the relationships holding between certain propositions in virtue of their form. Traditionally, it is represented as in the following square diagram.

²⁷ *Id.* at 45

²⁸ *Id.* at 53

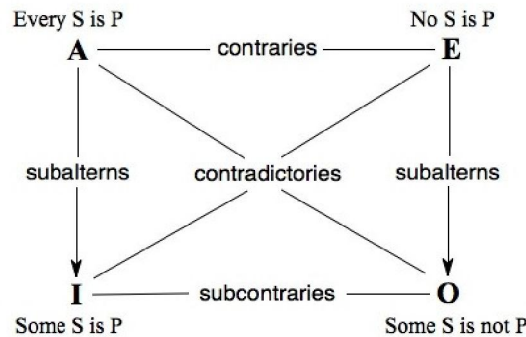
²⁹ Mark Andrews, *supra* note 19, at 475-476

³⁰ *Id.* at 477

³¹ Mark Andrews, *supra* note 19, at 478-481

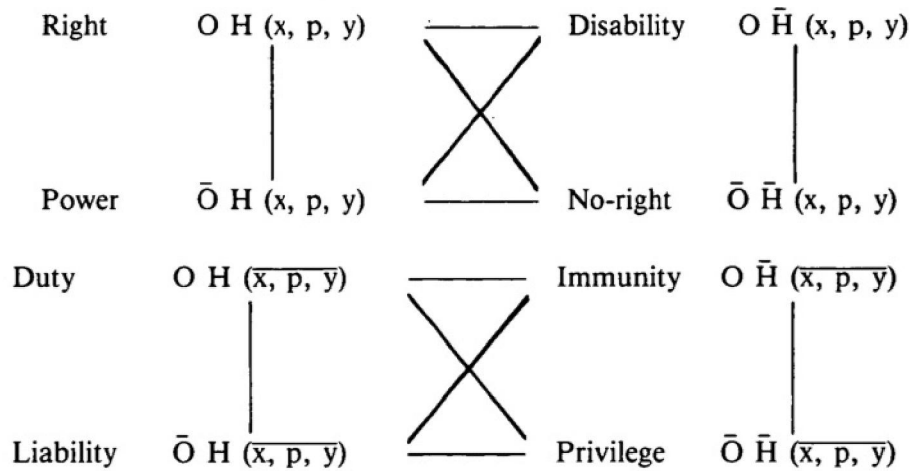
³² Anderson, *supra* note 25, at 31





In the above square, A is said to be the Universal Affirmative, E the Universal, I the Particular Negative and O the Particular Negative³³. The lines joining the different propositions represent the different logical relationships that hold between them. The propositions connected by the diagonals are contradictories. Two propositions are contradictories if they cannot both be true and they cannot both be false. The two upper propositions connected horizontally are contraries and the lower propositions connected horizontally are sub contraries. Two propositions are contraries if they cannot both be true but both can be false. Two positions are sub contraries if they cannot both be false but both can be true. The propositions connected by the vertical lines are subalterns. A proposition is a subaltern of another if it must be true if its superaltern is true, and the superaltern must be false if the subaltern is false.

On the basis of the cube earlier constructed and the symbols assigned to the eight jurial relations, the proposed squares of opposition for the A side and B side of the cube are as follows³⁴.



³³ Andrew Halpin, Fundamental Legal Conceptions Reconsidered, 16 Can. J.L. & Jurisprudence 41, 54 (2003); See also The Traditional Square of Opposition, Stanford Encyclopedia of Philosophy (2017) <https://plato.stanford.edu/entries/square/>

³⁴ Mark Andrews, *supra* note 19, at 481



The jural relations on the vertical lines in the squares are corollaries; i.e., when the first mentioned relation is true, then the second mentioned term must be true as well. The jural relations on the diagonals of the squares are contradictories; i.e., if one jural relation exists, then the other must not. The jural relations of right - disability and duty – immunity linked by horizontal lines on the squares are contraries; i.e., these jural relations may be absent at the same time but they cannot be present at the same time. The jural relations of power – no-right and liability-privilege, also linked by horizontal lines are sub contraries; i.e., these jural relations may be present at the same time but they cannot be absent at the same time³⁵.

The possibility that Hohfeld's cube may enable a computer to draw analogies and the analytical precision, which could be achieved, is a suggestion that has already been mooted in legal circles³⁶. The eight jural relations denoted by the three symbols $O H (x, p, y)$ are capable of being translated into binary language, where an unmodified symbol is assigned the value of zero and its negation assigned the value of one as indicated below.

Right	$O H (x, p, y)$	(0, 0, 0)
Duty	$O \underline{H} (x, p, y)$	(0, 0, 1)
Disability	$O \underline{H} (x, p, y)$	(0, 1, 0)
Immunity	$O \underline{H} (x, p, y)$	(0, 1, 1)
Power	$\underline{O} H (x, p, y)$	(1, 0, 0)
Liability	$\underline{O} \underline{H} (x, p, y)$	(1, 0, 1)
No-right	$\underline{O} \underline{H} (x, p, y)$	(1, 1, 0)
Privilege	$\underline{O} \underline{H} (x, p, y)$	(1, 1, 1)

II. CONCLUSION

Fundamental legal conceptions as applied in judicial reasoning: the very title of Hohfeld's work reveals that his work dealt with fundamental conceptions not in the abstract, but used concretely in the solving of practical problems which arise in the everyday work of lawyer and judge. The chief value of Hohfeld's tables of correlatives and negatives is to afford us a quick means of definition and to compel a uniform usage. Hohfeld believed his eight conceptions to be fundamental, the lowest common denominators of law – the lowest generic conceptions to which any and all legal quantities may be reduced. They are fundamental because they are the conceptions out of which in various combinations we construct our conceptions of property, ownership, trust, easement, license, patent, contract, debt, and other important complexities. They are fundamental because they are constant elements, into which all of our variable combinations can be analyzed, common denominators to which the superficially dissimilar, like law and equity, property and contract, can be reduced. The eight concepts of Hohfeld's classification are the means by which we describe generally the legal relations of persons. Any single legal relation necessarily involves two persons. Correlatives in Hohfeld's scheme merely describe the situation viewed first from the point of one person and then from that of the other. Rights, privileges, powers and immunities – these four terms seem fairly to constitute a comprehensive general classification of legal rights in the generic sense. The four correlative terms – duty, no-right, liability and disability – likewise sufficiently classify the legal burdens which correspond to the legal benefits. The eight jural relations defined by Wesley N. Hohfeld thus divide and unite the legal world. Precisely defined, they form a coherent structure which allows us to see each of the concepts in relation to all of the others.

³⁵ *Id.* at 481-482

³⁶ *Id.* at 485



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