

Jural Opposites	rights	privilege	power	immunity
	no-rights	duty	disability	liability

Jural Correlatives	right	privilege	power	immunity
	duty	no-right	liability	disability

1. Last class, we covered a lot ground. Principally what we did is make use of Hohfeldian terminology to specify the positions of AP and TO, while the statute of limitations is being run out. We said that TO has:
 - a. A right to possession good as against, notionally, the whole world, with the whole world having a duty to stay off;
 - b. A privilege of use with no one having the right to stop him/her,
 - c. A power to convey that bundle of rights and privileges with anyone, notionally, being liable to the exercise of this power
 - d. An immunity from having the government take the property unless it pays for it, with the government being disabled to take the property unless it pays for it.
 - e. A liability to lose all of this if AP exercises his/her power to run out the statute.
 But AP also has:
 - a. A right to possession, with everyone except TO having a duty to stay off;
 - b. A privilege of use with only TO having a right to stop him/her,
 - c. A power to convey what s/he has got,
 - d. A power to run out the statute against TO
 - e. Whether AP is immune from a government taking is, as we saw in *Winchester* a controversial matter, but trend seems to be compensate the possessor.
2. Last class we also considered the following problems in Hohfeldian terms:
 - a. O(wner) → (i.e., conveys) a life estate W(ife, but the relationship is irrelevant to this problem) → remainder C(hild, but the relationship is irrelevant to this problem).
 - i. The conveyance takes places before AP enters. AP enters on W (she left and went to California). The statute runs out during W's lifetime. Shortly after statute has run out and W has died, C sues AP.
 - ii. AP enters before O conveys to W → remainder to C. Rest of the facts same as above.

We concluded in Problem 2(a)(i) that C was immune from the exercise of AP's power to run out the statute because C's right to possession only begins when his/her mother dies. We also concluded (with considerable less certainty) that in Problem 2(a)(ii) C was not immune from the exercise of AP's power. O was disabled from extending the statute of limitations by creating a life estate and remainder while AP was on the land. All that O could do was convey his cause of action to get AP off the land (if he could do that).

- b. AP → life estate W → remainder C, W dies, C enters, O sues
 - i. Neither W nor C has held for stat period, but together they have

- ii. After holding for statutory period, W → T, W dies, C sues T

We concluded in Problem 2(b) that W had the power to run out the statute against TO not only on behalf of herself but also on behalf of C. Hence, when the statutory period ran out, C acquired a right to possession good as against the whole world to commence when W died. W was disabled from conveying the right to possession of the land to anyone after her death. Hence, C's suit against T. would succeed. Contrast this with the following problem:

AP1 enters in 1990. AP2 ousts him in 2000. 20 year statute of limitations. TO sues AP2 in 2015.

AP1 had the power to convey his power to run out the statute against TO to anyone, including AP2. AP1 did not, however, exercise this power. Hence, TO had a new cause of action against AP2, and his suit against AP2 is timely. AP2 has a right to possession good as against the whole world except TO and AP1.

- c. O → life estate W → remainder C, but the conveyance is void, W enters and holds for statutory period → T and dies, C sues

We concluded in Problem 2(c) that normally W is running out the statute against all comers. C has neither title nor possession on which to base an action against T. (There are cases that hold otherwise; can you think of a reason why they might so hold?) We also concluded that C might have a cause of action against T if during the period that the statute was running he was, in fact, TO. We might say that he was immune from having the statute run out against him because W's claim that she was only holding a life estate estopped her from acquiring more than she claimed. How might such a result be supported?

Estoppel in pais: if a party to a case has behaved in such a way as to lead the other party reasonably to rely on that behavior, s/he won't be allowed subsequently to change his/her mind to the relying party's detriment. There are a number of weasel words in that sentence; perhaps the most mustelike is 'reasonable'.

We may return to estoppel at the end of the class, but right now, let us deal with four topics that are in the *Materials* that we haven't yet covered.

<https://maps.google.com/maps?oe=utf-8&client=firefox-a&q=Emma+Street+and+Brock+Avenue+New+Bedford+MA&ie=UTF-8&hq=&hnear=0x89e4e3da3f25854f:0x49d49fbd453b814,Brock+Ave+%26+Emma+St,+New+Bedford,+MA+02744&gl=us&ei=JAdVUP29A8T00gHWrlGQCA&ved=0CCAQ8gEwAA>

3. *Mendonca*

- a. What does the second section of the Pennsylvania statute mean (p. S85)?

Entry upon land.—No entry upon real property shall toll the running of the period of limitation specified in subsection (a)(1), unless a possessory action shall be commenced therefor within one year after entry. Such an entry and commencement of a possessory action, without recovery therein, shall not toll the running of such period of limitation in respect of another possessory action, unless such other possessory action is commenced within one year after the termination of the first. (42 Pa. Cons. Stat. Ann. sec. 5530(b))

- b. How does the Massachusetts provision (p. S101) differ?

No person shall be held to have been in possession of land within the meaning of this chapter merely by reason of having made an entry thereon, unless he has continued in

open and peaceable possession thereof for one year next after such entry or unless an action has been commenced upon such entry and seisin within one year after he was ousted or dispossessed. (M.G.L. ch. 260 §28)

c. Why did the SJC ignore the Massachusetts provision in *Mendonca*?

4. Let us imagine that a rather dishevelled character named Ebenezer P. Snodgrass with a thick Tennessee accent walks into the legal aid office in which you are working and says that he's being sued for 'his' land. The land turns out to be a parcel of several acres deep in the woods adjacent to what used to be the Army base in Fort Devens, Massachusetts (near Ayer, Shirley, and Harvard, MA, about 40 mi. northwest of here). Fifty years previously his 'pappy' had migrated from Tennessee along with his 'mammy'. They had raised a number of children there and died there. The children, Ebenezer's sibs, have all moved away, he does not know where. So long as the Army was at Fort Devens, no one bothered them, and they didn't bother anybody. They raised some corn and kept to themselves, going into town only occasionally for basic supplies. All this sounds highly implausible to you, and by delicate questioning (with considerable reluctance on Ebenezer's part) you are able to discover that the elder Snodgrass and Ebenezer after him were in fact manufacturing large quantities of moonshine that they sold to the NCO's at Fort Devens and to a selected few non-military local residents.

a. Where do the lawyers go from here?

b. What are the issues? Good faith is obviously one, but it's not the only one.

5. There's one point on *Belotti* that we did not cover last week, because the note that vaguely explains it was not assigned until yesterday (p. S105, note 2). On p. S81, the *Belotti* court says: "By an alleged corrective deed, dated April 24, 1916, and not recorded, the devisees and heirs of Riedel attempted to correct their deed of 1906 and convey to the defendant Bickhardt by correct description the premises of which he was actually possessed, including the portion of the plaintiff's property which is the subject-matter of this action. The trial court held that this instrument was champertous and of no effect." Does anybody have any idea what that means? Herewith of barratry, champerty, and maintenance.

6. 42 Pa.Cons.Stat.Ann. §5533(a) (2012) has abolished the disabilities of insanity and imprisonment. It still has a general disability for civil actions by minors, which are defined as those under 18 "at the time the cause of action accrues." They get the full period after they reach their majority. *Id.* §5533(b)(i)–(ii). Hence the PA stat. is not particularly interesting. If, however, we go one state west, we get a provision of considerable interest. Consider the following provisions:

"That if any person or persons that is or shall be entitled to such writ or writs [referring to real actions that had not been successfully limited before the date of the statute], or that has or shall have such right or title of entry [referring to the entry that would found an action of ejectment], be or shall be, at the time of the said right or title first descended, accrued, come, or fallen, within the age of one and twenty years, feme covert, non compos mentis, imprisoned or beyond the seas, that then such person and persons, and his and their heir and heirs, shall or may, notwithstanding the said twenty[-one] years be expired, bring his action or make his entry as he might have done before this act, so [long] as such person and persons, or his or their heir and heirs, shall within ten years next after his and their full age, discoverture, coming of sound mind, enlargement out of prison, or coming into this realm, or death, take benefit of and sue forth the same, and at

no time after the said ten years.” 21 Jac. 1, c. 16, § 2 (1623). (Spelling and punctuation modernized but otherwise unaltered. The limitation period in the Jacobean statute was 20 years not 21, but for purposes of the problems we’ll assume that it is 21, just as we will assume that the age of majority in both England and Ohio is 21.)

“An action to recover the title to or possession of real property shall be brought within twenty-one years after the cause of action accrued, but if a person entitled to bring the action is, at the time the cause of action accrues, within the age of minority or of unsound mind, the person, after the expiration of twenty-one years from the time the cause of action accrues, may bring the action within ten years after the disability is removed.” Ohio Rev. Code Ann. § 2305.4 (Baldwin from Westlaw 2012, derived from Ohio Rev Stat 4978, codified, I think, in 1851; the Rev Stat also included “a married woman” and “imprisoned” among the ‘disabled’.

- a. Is the word “disability” being used in a Hohfeldian sense?
 - b. Why have disability provisions? Which of the policies of the statute do they further?
 - c. What is the difference in the wording of the English statute and the Ohio statute? Or to put the question slightly differently: What did the Ohio legislature do to the English statute?
7. Problems. The book (pp. S89–S90) has a number of questions about disability provisions. We won’t do all of them in class, but we will try to do a couple so that you can see where the ambiguities lie in what seems to be a perfectly straightforward pair of statutes. If you want to do more of them use this outline; the tech got botched in the book. There is a self-test version of the problem with arguments for reaching the results at http://www.law.harvard.edu/faculty/cdonahue/courses/prop/lec/outcl08_19S_selftest.html

AP enters in 1990. The limitations period is 21 years. AP has possessed in all the ways that AP is supposed to possess. The age of majority in both England and Ohio is 21. None of the characters in the problems are, or were at any relevant period, married women, imprisoned, or ‘beyond the seas’. When does the statute run out against TO (‘true owner’) under the following assumptions? (Suggested answers in square brackets.)

- a. *TO was of sound mind in 1990. TO became insane the day after AP entered. TO is alive and not well today. [2011]
- b. *TO was 18 in 1990. He is alive and well today. [2011]
- c. *TO was 5 in 1990. TO died in 2000. H, TO’s heir, was of full age and of sound mind at the time. [2011]
- d. *TO was insane in 1990. He died insane in 2005. H is his heir and has no disability. [2015]
- e. TO was 5 in 1990. He became insane in 1995. He is alive and not well today. [2016 or still tolled under the English statute; 2016 under the Ohio statute]
- f. *TO had no disability in 1990. He died in 1995. H is his heir and was 6 in 1995. [2020 under the English statute; 2011 or 2020 under the Ohio]
- g. *TO was 5 in 1990. He is alive and competent today. [2016 under the English statute; 2011 or 2016 under the Ohio].
- h. TO was insane in 1990. TO died insane in 1995. H was 6 at the time of TO’s death. [2011 or 2020 under the English statute; 2011 under the Ohio.]

Outline – Class 08

- i. Would your answers to any of the above questions be different if you were told that all the disabled parties had a judicially-appointed guardian or conservator who could sue on their behalf?
 - j. *TO disappeared in 1985. You are representing P who wishes to buy the property from AP. When would you advise P that such a purchase is safe?
8. To return to the problems with which we were dealing yesterday and at the beginning of today's class:
 - a. TO1 and TO2 are co-owners of land. Let's say that they are sibs. There's a small house on the land, with room for only one person. TO1 lives in it, and TO2 lives elsewhere. After 21 years TO1 claims to have adversely possessed against TO2.
 - b. In 1995, APH and APW, husband and wife, enter upon land pursuant to a void conveyance that purports to give them a co-tenancy. They farm the land together and generally behave as if they were cotenants. Unbeknownst to either of them APW is, in fact, TO. APW predeceases APH in 2008, who remains in possession after her death, but not for the main statutory period. He is then sued by APW's intestate heir (APW having died intestate). The intestate heir is the same person who was the conveyor of the void conveyance in 1995. The jurisdiction has a seven-year statute of limitations for those who pay the taxes on the land and APH has paid the taxes since 1995. [This was a principal issue in an exam question that I gave a few years ago. Imagine a 20 year statute and that the year is 2013. See *Mats.*, p. S110.]

PROBLEM [p. S110–S111]

This is the core of the essay question that I gave in this course a few years ago. There is much about this question that you still are not ready to deal with, but there is one issue that you should be ready to say something intelligent about right now. The first person (or group of people) who think they have an answer to the question posed above send it to me (rspang@law.harvard.edu). At this stage of the game we're looking for a few paragraphs not pages. I'll forward it anonymously by email to the class. The rest of you see if you agree with it or disagree with it. Why? Let us know. I'll intervene if and when I think it's necessary.

Andrew Stark was the owner in fee simple of the Stark Farm, in the U.S. state of Ur, east of Eden, with an unimpaired chain of title going back to a grant from the Federal Government in the mid-nineteenth century. Andrew died in 1983, leaving a will which was duly admitted to probate and which provided, in pertinent part:

“I devise the Stark Farm to my son Bartholomew and his heirs in fee simple for as long as they shall farm the property; and if they shall ever cease to farm it, then to my daughter, Clarissa and her heirs in fee simple, if she shall then be living; otherwise to the Eden Audubon Society.

“All the rest and residue of my property, real personal and mixed, I devise and bequeath to my aforesaid son Bartholomew and my daughter Clarissa, and to the survivor of them.”

Bartholomew took possession of the Stark Farm and farmed it until 1988 when he died intestate, a widower survived by his only child, David, who took over the farming operations on the Stark Farm. In 1995, Clarissa, and her husband, Ebenezer, received the following letter signed by David:

“Dear Aunt Clarissa and Uncle Eb.,

“Despite my respect for Grandpa Andrew’s wishes, I’ve found that the farmer’s life is not for me. Deeply as I love you both, I’m perfectly happy to have you take over the Stark Farm. The land is all yours. I’m sure that you’ll take care of it.”

Clarissa and Ebenezer wrote David that they would respect his wishes and “took over the farm.” David joined the Foreign Legion.

From 1995 to the present (which is 2013) Ebenezer has managed the farm, hired the help, borrowed the necessary funds on his own signature, and paid the taxes by checks on his own bank account. Clarissa lived with Ebenezer on the farm and helped out until her death in 2008. None of her children survived her. She left no will, and under the common law of intestacy (which still prevails in Ur), her heir is her nephew, David.

In the meantime the developments that Andrew had anticipated as early as 1980 has come to fruition. Ebenezer has concluded that farming the Stark Farm is no longer feasible because of the combined effect of a number of circumstances: (1) Residential development in the area has prompted the adoption of environmental regulations that severely restrict the use of pesticides that are necessary for the profitable operation of the farm. (2) Huge mechanized farms are being developed in adjoining states (and in more rural areas of Ur) that are able to sell their produce at prices with which the Stark Farm cannot profitably compete.

Fiona, a land subdivider, is willing to pay Ebenezer a sum of money for the Stark Farm about twenty times its current worth as a farm, if satisfactory answers can be produced to the following legal questions:

(1) Does Ebenezer own any interest in the Stark Farm? If so, what interest? *[The other questions are omitted for the time being. You may assume, although these will turn out to be issues, that David’s letter was effective to convey whatever interest he had in the farm at the time, and that the provisions of Andrew’s will make it highly likely that Clarissa alone was the true owner of the farm in 1995.]*

Your senior partner (Ebenezer’s attorney) has asked you for a preliminary memorandum analyzing the problem and indicating factual or legal questions requiring further investigation. You should write the memorandum, taking into account, to the extent necessary, the following statutes, the only ones in the state of Ur of any possible relevance to the case.

- (1) A common-law reception statute. (1785)
- (2) A married women’s property act. (1850)
- (3) A twenty-year statute of limitations on actions to recover real property. (1805)
- (4) “Whoever, under claim and color of title, shall have maintained uninterrupted possession of land and paid the taxes on the same for a period of seven consecutive years shall be deemed the owner thereof.” (1920).