

# Michigan Law Review

---

Volume 19 | Issue 1

---

1920

## Plurality of Advantage and Disadvantage in Jural Relations

Albert Kocourek

*Northwestern University Law School*

Follow this and additional works at: <https://repository.law.umich.edu/mlr>



Part of the [Public Law and Legal Theory Commons](#)

---

### Recommended Citation

Albert Kocourek, *Plurality of Advantage and Disadvantage in Jural Relations*, 19 MICH. L. REV. 47 (1920).

Available at: <https://repository.law.umich.edu/mlr/vol19/iss1/4>

This Article is brought to you for free and open access by the Michigan Law Review at University of Michigan Law School Scholarship Repository. It has been accepted for inclusion in Michigan Law Review by an authorized editor of University of Michigan Law School Scholarship Repository. For more information, please contact [mlaw.repository@umich.edu](mailto:mlaw.repository@umich.edu).

## PLURALITY OF ADVANTAGE AND DISADVANTAGE IN JURAL RELATIONS

A RECENT writer has inveighed, not without some declamation, against the use of rhetoric in the field of law-making.<sup>1</sup> But rhetoric finds a place, and often an unprofitable one, not only in legislation, but even in technical legal analysis. Metonymy (change of name) has often been pointed out. When we say that X is the owner of blackacre, what we mean is that X has certain legal advantages concerning blackacre; in other words, that X is the holder or dominus of claims (rights) and powers concerning certain land. Synecdoche (saying more or less than is meant) is very commonly found, and the illustrations are numerous in the interpretation of statutes. When "full faith and credit" are to be given to the judgments of another state certain exceptions are sometimes made, as, for example that the judgment must be responsive to the pleadings where the defendant has not appeared. Again, a right 'against the whole world' may mean something less extensive than the words imply. Personification is a useful and necessary rhetorical figure often employed by the law, not, of course, in mere words, but in deeds, as when, for example, a barrel of molasses which contains too much sulphur is condemned to destruction. Even the attribution of legal capacity to a human being amounts, in essence, to legal personification. Pleonasm (the use of redundant words) is a common vice often resorted to out of caution that nothing shall be omitted. It finds expression in such phrases as 'rights, claims, and demands,' and 'transfer, set over, alien, and convey.' Metaphor also abounds, as when we speak of an agent 'representing' his principal, of 'transferring' land, or of 'assigning' a contract.<sup>2</sup>

---

<sup>1</sup> Tourtoulon, "Les Principes philosophiques de l' Histoire de Droit": Author's appendix to American edition: MODERN LEGAL PHILOSOPHY SERIES, XIII.

<sup>2</sup> *Aylett v. Minnis* (1791), *Wythe* 219 (225): "When one saith he deviseth land, or bequeaths any other thing, the terms are elliptical; some words are left out but which are understood; and in such a case, the testator must mean that the devise or bequest shall have, not a sensible immediate operation upon the land or other thing said to be devised or bequeathed, but a mystical operation on his dominion, right, property, over to, in the land or other thing." In a note (c) to the edition of 1795 it is quaintly remarked: "Words have

Other figures and abundant illustrations for all of them no doubt can readily be found. Some of these figures can not be dispensed with, and perhaps all of them are at times useful; but metaphor and metonymy, which may be put in the useful group, are especially dangerous. In the ordinary case, like synecdoche, they serve the purpose of colloquial abbreviation, but in the analysis of new problems, and, particularly, borderline cases, they must be used, if used at all, with great caution. In these cases, and in every instance where accuracy of legal analysis is demanded, rhetorical figures of any sort and abbreviated forms of expression must be abandoned for precise and fundamental terminology.

## I

In legal analysis the starting point is jural (legal) relation. In a given situation of fact, the jural relation must be isolated and its content fully and accurately defined.<sup>3</sup>

A jural (or, concretely, legal) relation is a situation where one person (who may be called the 'dominus' or 'holder') can control his conduct adversely as against another person (who may be called the 'servus' or 'bearer') or where the dominus can control the conduct of the servus, with the aid of the law. It will be seen that there are two classes included under this definition: (1) where the dominus can control his own act adversely, with the aid of the law,<sup>4</sup> toward the servus; (2) where the dominus can, with the aid of the law,

---

been called winged; and they well deserve that name when their abbreviations are compared with the progress which speech could make without these inventions."

<sup>3</sup> For an extended examination of this concept, see *COL. L. REV.* (1920) XX, 394: "Various Definitions of Jural Relation."

<sup>4</sup> It is not sufficient in jural relations to say that an act can be controlled with "legal effect", for illegal acts also have legal effect in this that they create and destroy jural (legal) relations. But since illegal acts are not aided by the law for the legal advantage of the actor, the capability of performing such an act does not constitute a jural relation. Capability of committing a tort or of violating a contract is not a jural power but a simple power. (A discussion of quasi jural relations appears above.) Again, there are capabilities for acts which are legal and which have legal consequences, but which do not constrain others, and which, therefore, do not constitute jural relations (e. g., offer, abandonment, estoppel).

control an act of the servus. Each of these two situations has a double aspect, and the four aspects may be shown in a diagram:

TABLE I.

DOMINUS		SERVUS	
ADVANTAGE	CORRELATIVES	DISADVANTAGE	
Power	→	Liability	
Privilege	] →	Inability	
Immunity	] ←	Disability	
Claim	←	Duty	

[EXPLANATION:—The arrows indicate the direction of the act. The brackets mean that the act can be obstructed.]

The dominus (or holder) in a jural relation has a certain advantage as against the servus (or bearer). This advantage is either a power, or a privilege, or an immunity, or a claim (right). Likewise, when a jural relation exists, the servus (or bearer) has a certain disadvantage as against the dominus. This disadvantage must be either a liability, or an inability, or a disability, or a duty.

When the dominus has a 'power', he can act toward the servus with legal constraint; for example, an unpaid creditor may bring an action against his defaulting debtor; the debtor is under the disadvantage of a 'liability' to be sued. When the dominus has a 'privilege' he may decline with legal constraint an act toward the servus; for example, he may refuse to testify in an action when called as a witness, upon the ground of liability of incrimination; the disadvantage of the servus is an 'inability' to require the dominus to act (i. e. to testify). When the dominus has an 'immunity' he can repel, with legal constraint, an act of the servus; for example, the dominus can prevent the servus from taking his land in eminent domain proceedings, on the ground of statutory exemption; the disadvantage of the servus is a 'disability' to act against the dominus. Lastly, the dominus may have a 'claim' (right) against the servus to have an act performed by the servus; for example, to render services under a contract; here the disadvantage of the servus is the 'duty' to do the act.

In addition to jural relations of the strict type illustrated, there are also situations which resemble jural relations, but in which there is

lacking in the one asserting an advantage, a capability<sup>5</sup> to make it effectual with the aid of the law. These relations may be called, for want of a more specific name, quasi jural relations. Where it is necessary to distinguish the two kinds, the various advantages asserted in quasi jural (legal) relations may be called 'simple advantages', and the advantages of jural (legal)—they may also be called 'nexal'—relations may be called 'nexal advantages.'

An illustration of these quasi jural advantages will be serviceable at this point.

A parol gift made by A to B not accompanied by delivery of the chattel invests B with a simple claim of title to the chattel.<sup>6</sup> If A dies, trover could not be maintained by B against A's executor for refusal to deliver. If B makes a demand on the executor for delivery of the chattel, the executor may decline. The executor's advantage is a privilege, but it is a simple privilege since the refusal of the executor in no way affects the conduct of B, nor does the law, in the situation stated, in any way interpose its aid. The executor can not and need not ask legal assistance in declining B's demand based as it is on a (simple) claim which is legally ineffective. It will be

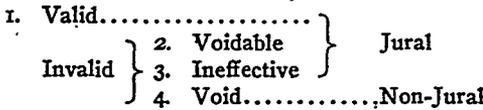
<sup>5</sup>'Capability' is used here to distinguish it from 'capacity'. Capacity is the general attribute of personality; it is the base upon which 'capabilities' (advantages) and disadvantages are founded. A person may have a capacity for a specific claim or power without being the actual holder of that claim or power. The antonym for 'capability' does not seem to be needed for the convenience of legal analysis, nor does the disadvantage side of jural relations seem to require a term with a function similar to 'capability'. The word that naturally suggests itself, 'incapability', would be as awkward to designate a duty as is the word 'obligation' as applied to a liability. (cf. SALMOND, "JURIS." § 77.) It is sufficient to speak of 'capacity for jural disadvantages', or more specifically 'capacity for legal duties and liabilities', and when, in definition or paraphrase, an introductory word is necessary the general term 'disadvantage' may be employed.

<sup>6</sup>Probably the most extensive field for the operation of the concept 'simple claim' is in connection with the 'exceptio' of Roman law and the 'Einrede' of modern civil law. See GAIVS, INST. IV, § § 115-126; POSTE, "GAI INST. JUR. CIV." 564 sq.; BETHMANN-HOLLWEG, "RÖM. ZIV. PR.," II, 388; LEONHARD, "IRRTUM," p. 301; BEKKER, "PAND." I § 28; KELLER, "RÖM. ZIV. PR." § 34. Imperfect legal relations which may be perfected by unilateral acts (e. g., ratification), also furnish many interesting illustrations of quasi jural relations.

See also note 9 post.

observed in the illustration just given, that B is the holder of a simple claim, while A, or his executor, is the holder of a simple privilege. B has a (simple) claim to have the chattel delivered to him on demand; A, or his executor, has a (simple) privilege to decline to deliver the chattel on demand made.<sup>7</sup> A conflict of this kind can never exist in jural relations. If B has a nexal claim to have an act done by A, A cannot have a nexal privilege to decline the act required, though A does have a naked privilege to decline (i. e., he may actually decline and thereby subject himself to the sanction flowing from a violation of his nexal duty).

<sup>7</sup> Acts with respect to the existence or non-existence of jural relations are of four kinds as shown in the following diagram:



*Valid* jural acts create nexal jural relations (e. g., offer and acceptance). They need not be further considered at this time. *Void* acts also need no further consideration because they constitute neither jural (nexal) nor quasi-jural relations.

*Voidable* jural acts create jural relations (e. g., grant of land by an infant), but they are subject to the infirmity that the jural relation may be terminated by the will of another (e. g., the infant, in the example given). Unless the act is disaffirmed the (nexal) power to terminate the relation is itself extinguished in the lapse of time.

*Ineffective* jural acts do not immediately and directly create nexal jural relations, but they bring into existence a legal 'substrate' (that very term has been used by the courts: *Whitney v. Dutch* (1817), 14 Mass. 457) upon which a nexal jural relation may be founded; for example, the executory promise of an infant. Until affirmed, the 'substrate' is a quasi jural relation. When affirmed, the quasi jural relation is transformed into a nexal jural relation. Whether the nexal relation 'relates back' is a matter of controversy (cf. *Edmunds v. Mister*, 58 Miss. 765) but the preferable technical operation as between the same parties is to validate the relation, with all its incidents, from the beginning. Interesting questions may arise where the quasi jural relation is not affirmed generally but with qualification. Theoretically, no reason appears why this may not be accomplished.

A *void* act is non-jural; it is so far wanting in legal effect as between the parties that no legal relation or 'substrate' is created at the time of the act; nor can the act later be affirmed without an *independent* jural act. (In some cases—illegality—the act can never be validated. For example, a promise to perform an act which is contrary to good morals can not be made valid by a

When a creditor A, holding an assignable chose in action against B, transfers it to C, and, later, makes a second assignment of the same chose in action to D, both acts of A are the exercise of simple powers. These acts of power of A involve no constraint on the conduct of either C or D, nor as against C or D are they adversary acts, (i. e. requiring the servus to limit his conduct after the act is completed.) As against the debtor, B, however, the power act (i. e. the assignment) is nexal since it requires him to limit his conduct in accordance with the legal effect of that act subjoined to further acts of the assignee. Assuming that the assignment first acted on in good faith is legally effective,<sup>8</sup> if D (the second assignee) first gives notice of his (simple) claim (against B) to B in good faith, and in good faith on the part of B and D, the claim is paid, then D has exercised as against C (the first assignee) a (nexal) power the effect of which is to destroy the nexal claim of C against B. C, (the first assignee), however, as against A (the original creditor), had a simple immunity against the making by A of a second assignment to D. This simple immunity was not effective to protect C against the destruction of his nexal claim. In the ordinary case,

---

new promise upon a new consideration.) An *ineffective* act is also a nullity until it is affirmed (e. g., executory promise of an infant), but it differs from a void act (such as may be affirmed) in this that an *ineffective* act may be validated by a new *dependent* jural act (e. g., simple ratification by an infant after attaining his majority, of a power of agency: *Whitney v. Dutch*, 14 Mass. 457) while a void act can be validated (if at all) only by a new, *independent* jural act (e. g., in the case of a contract, upon new consideration). A *void* act has no quasi jural 'substrate'.

The illustration, above, of a gift without delivery, perhaps goes to the verge of a quasi jural relation, since it seems difficult to imagine how the act now ineffective for want of delivery can be validated without delivery (cf. *Gallagher v. Dohany*, 65 Kans. 341, 69 Pac. 330) or its equivalent. Yet, situations may arise where the quasi jural character of the act may be demonstrated. Thus, if the donee should inadvertently acquire the detention of a chattel theretofore verbally 'given' to him but not delivered, the donor may by assenting to the possession of the donee, validate the ineffective gift; and in that case the validating act (if general) would also as between the parties carry with it all accessory relations—accretions, interest, etc. Whether third persons could attack the situation on the theory of 'relation back' would be determined, or might be determined, on other grounds.

<sup>8</sup> Since we are not concerned here with actual legal solutions of jural problems, illustrations will in general be disposed of hypothetically.

where plural advantages and disadvantages are not present in a given legal situation, a simple immunity would be effective against adversary acts. Thus, the title of A in a chattel can not be divested by B, or any other person in the absence of other operative facts. A has a simple immunity and any attempted transfer by B of A's title would be exercise not of a nexal, or, of a simple power, but of a naked power.<sup>9</sup>

---

<sup>9</sup>The manifest difficulty of dealing in a systematic way with quasi jural relations, the alogical character of these relations, and, especially, the vexation of effort to draw a sharp line between simple legal advantages and naked claims and powers, naturally presents the question, whether the effort is worth while. But it can not be disputed, whatever the labor required to bring order out of chaos, that the usages of speech proclaim the existence of these various situations of fact, and it would seem to follow that the necessity of distinguishing them cannot always be avoided. Three general methods of solution are possible:

1. The first perhaps is no solution at all. It would, so it seems ignore any distinction between jural (nexal) and non-jural relations. According to this view what is not forbidden "is just as real as a rule of law as a rule that forbids" (cf. HOHFELD "FUND. LEGAL CONCEPTS," p. 48, n. 59). The discredited philosophic effort to milk a he-goat through a sieve could hardly be less productive for legal analysis than this expansive and highly indefinite program for the law. If it be answered that legal analysis works with this apparatus, it may be replied that it would work equally well without it, as is manifest in countless decisions of the courts.

2. A second solution is to ignore any distinction between simple and naked legal situations. Since there is always some danger of an art becoming too complex for practical use, this answer has much to commend it. A modified form of this solution would be to accept some of the more important distinctions suggested by the next solution.

3. The third solution would attempt to distinguish definitely the fields of simple relations from the more primitive types in accordance with the usage ventured for illustrative purposes in the above text. It remains to state the rationale of this practice as follows:

Simple power (relation) is any situation where one may project an act toward another with legal consequences, but without the constraining aid of the law. There are two varieties: (a) illegal powers (e. g., tort): and (b) legal powers (e. g., offer).

Simple privilege (relation) is a situation of non-subjection to a nexal claim of another, not accompanied by a coincident, adversary jural (nexal) relation, of which another is dominus, and where the correlative (simple) inability is not reciprocal to a nexal liability (e. g., simple privilege to refuse payment of a simple claim).

Simple immunity (relation) is a situation of non-subjection to a nexal

The example of the chose in action above discussed with reference to some, but not all, of the jural and quasi relations involved in the legal situations given in a common and uncomplicated case, may suffice to demonstrate the danger of relying too much on metaphorical, metonymic, or abbreviated figures in the analysis of legal problems, and it perhaps sufficiently shows the points of distinction between simple and nexal legal advantages, without further illustration.

## II

Jural relations, consisting of four distinct types of acts under the control of one person as against another, may be represented not only by a system of correlatives where a distinctive name is given to the dominant and servient side of each jural relation, but an examina-

---

power, not accompanied by a coincident, adversary jural (nexal) relation, of which another is dominus and where the correlative disability is not reciprocal to a nexal duty (e. g. simple immunity against transfer of one's title.)

Simple claim (relation) is any situation where one may claim an act from another but where the claim lacks legal force (a) because of invalidity in the premises (not amounting to illegality, e. g., 'lex perfecta') or (b) because the premises are incomplete. In the first type (a) of claim (invalidity), a rough, general test of its character as a simple claim would be its sufficiency to support a judgment on a motion in arrest after an overruled demurrer. In the second type (b) of simple claim, the incompleteness may occur (i) because, although a jural relation exists, the simple claim is only a preliminary or partial element of its content (e. g., simple duty, of the master to provide his servant with a safe place to work) (cf. note 13, post); or (ii) because an act essential to a complete jural nexus has only been partially completed (as in a defective 'juristic act', e. g., oral gift without delivery).

All other situations by exclusion would be naked, non-legal situations of fact.

Another, special method of solution would be to attempt to find suitable terms for each simple and each naked, legal situation, avoiding the use of those employed for nexal relations; for example, a 'claim' not correlative to a nexal duty, might be called a 'demand', etc.; but invention here encounters the great, if not insuperable, difficulty of overcoming an inveterate usage which has appropriated a single series of terms for every variety of legal and non-legal situation, and it seems best, therefore, to compromise with it.

Since it is not reasonable to expect that the detailed explanation of the third solution above, will be regarded as of enough practical importance to require vigorous application, a rough, general test of quasi jural relations, to differentiate them quickly from the primitive types, may be proposed as fol-

tion of the content (the act which is the expression of conduct) in jural relations, discloses an internal relation among the four types of acts, which may be systematically arranged and described.

*Contraries.* In contraries there are opposed directions of the content (act) of the jural relation. In 'power' the dominus acts or has a capability of acting, adversely, with the aid of the law against the servus. In 'claim', the jural act has a contrary motion, in the direction of the dominus from the servus. Power and claim may, therefore, be denominated contraries. Since, also, each of these acts proceeds without interruption either at the point of beginning or at the point of ending, these two jural relations may be called 'progressive jural relations.' Power and claim are the principal types of jural relations, and the other two jural types, privilege and immunity, are only special varieties employed for the convenience of speech.

*Reciprocals.* These are the sub-types of power and claim, arranged, respectively, with their principal types. Privilege is a special kind of power; and immunity is a special kind of claim. Accordingly, power and privilege are reciprocals. As already suggested, the term privilege is used for convenience of speech to indicate an irregular or abnormal kind of power; and immunity, for like convenience, is used to indicate an irregular or abnormal kind of claim. It would be inconvenient to say that one has privilege to decline the negative act of not uttering a slander while giving testimony in a lawsuit or when answering in good faith a request for information concerning a former employee. In such a case, it also seems over-emphatic to assert a (jural) power to utter a slander. Therefore, the declinatory aspect (privilege) of the act is united with its processive aspect (power) under the expression "privilege to [do the act]" or, objectively, a "privileged act." Privilege, therefore, is usually employed to indicate an effective declination of a negative act in a situation which departs from the general rule.

Immunity has a similar relation to claim and is employed to indicate an effective repulsion of a positive act in a situation which de-

---

lows: (a) they either have legal consequences when put in motion or (b) they have legal color. It may be insisted, however, that a severe regard for the specific applications of the nexal relations is often of major importance in technical analysis of obscure legal problems, and that in no case, however simple, can they be misapplied without peril.

parts from the general rule. For example, one may be immune from a prosecution because of a general or special exemption.

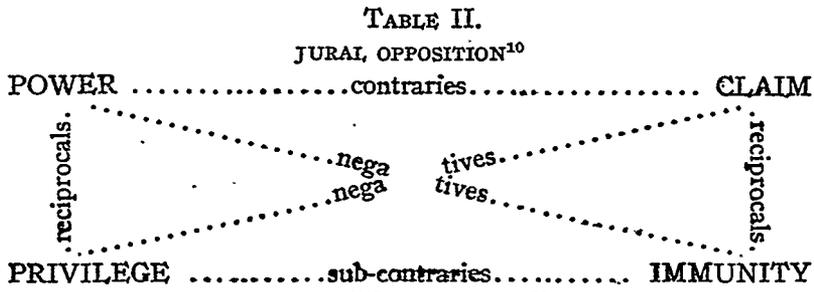
It is to be particularly noted, while the usage of speech gives to privilege and immunity a special application, that in jural relations, power and privilege, and immunity and claim, respectively, are always reciprocal. Thus, in the claim (right) of corporal integrity, the content of the claim (right), the negative act or acts which make the claim legally effective, is reciprocal to an immunity against the positive act or acts which infringe the claim (right).

*Sub-Contraries.* Privilege and immunity are sub-contraries, in the sense that obstructed acts have contrary directions. In a privilege, the dominus can obstruct (decline) his own act as against the servus with the aid of the law; in an immunity, the dominus can obstruct (repel) an act of the servus toward the dominus. This group may be called 'regressive jural relations'.

*Negatives.* This category relates not to the direction of the content (acts) of jural relations, but to the affirmation or denial of a quality in the content (acts.) There are two sets of negatives, power and immunity, and claim and privilege.

When a jural power exists, the dominus can act adversely with legal effect toward the servus. In an immunity, the servus cannot act effectively against the dominus. When a jural claim exists, the act of the servus may be required (it is attracted) by the dominus. In a privilege relation the act of the dominus cannot be required (it can be declined).

These various cross connections in jural relations may be conveniently summarized in the following diagram:



<sup>10</sup> This table which is adapted from the 'scheme of opposition' found in elementary textbooks in logic cannot be carried out into the so-called 'laws

## III

In a quasi jural relation there may be not only a coincidence of opposing quasi jural advantages in the same act which is the content of the relation, but this opposition, when it exists, is also one of logical conflict. Thus, if X has a claim against Y which is barred by the statute of limitations, X has a simple claim against Y to an act of performance, but Y has a simple privilege to decline performance. This logical conflict may exist in quasi jural relations because neither quasi dominus has the power to make his will effective by the aid of the law. Since claim and privilege are jural negatives (see Table II), it is evident that in jural relations (strict sense) such a conflict could never exist. Moreover, as to the content of a single jural relation there can never be any opposition of contraries, sub-contraries, or negatives. If conflict appeared in any one of these respects, it would logically destroy the idea of jural relation.<sup>11</sup>

Conflict is of two kinds: (a) logical; (b) potential. Logical conflict may exist in quasi jural relations considered singly or in combination, either with other quasi jural relations or with nexal (jural) relations. Potential conflict may exist in all cases where logical conflict may arise and also where there are plural jural relations arising out of the same operative facts. Potential conflict may be increased by the introduction into the legal situation of other persons with jural advantages or disadvantages; as, for example, in suretyship, trust, common ownership, joint and several acts.<sup>12</sup>

---

of opposition' as in logic. Metaphorically, perhaps, power and claim are forms of universal affirmation and negation depending on the positive or negative content of the relation, and in like manner, privilege and immunity might be considered as forms of particular affirmation and negation. If such a resemblance may be asserted, it is clear that it ends there, since jural relations are not reducible as such to logical propositions.

<sup>11</sup> In continental works, the subject of conflict of jural relations is treated under the title 'collision of rights': DERNBURG, "PAND." I § 42; HOLDER, "PAND." § 65; BEKKER, "PAND." I § 24; GIERKE, "PRIVATRECHT," I § 36; REGELSBERGER, "PAND." I § 55.

<sup>12</sup> B. C. B. 1631 provides that "the care of the child's person (by the father, by virtue of his parental power: B. C. B. 1627) includes the *right* and the *duty* \* \* \* to exercise supervision over him." This is an instance where the same act is the content of plural jural relations. It is not a case, as it might seem,

Having regard to a simple legal situation in which the operative facts (a) concern only two persons, (b) involve not more than two coincident jural or quasi jural relations, or either of them, and (c) in which temporal priority of one relation over another is ignored, we may show the variety of abstract permutations of jural advantages and disadvantages in the following table:

TABLE III

COINCIDENCE OF JURAL RELATIONS

DOMINUS		SERVUS
A		D
<i>A</i>		<i>D</i>
AA		DD
<i>AA</i>		<i>DD</i>
<i>AA</i>		<i>DD</i>
AD		DA
<i>AD</i>		<i>DA</i>
<i>AD</i>		<i>DA</i>
<i>AD</i>		<i>DA</i>

[Explanation: A means the advantage of the relation, and D the disadvantage. Roman letters indicate nexal (jural) relations; italics indicate quasi jural relations. For the purpose of indicating coincidence of specific jural relations, these specific relations may be numbered. Thus a jural power is A<sup>1</sup>; a jural privilege is A<sup>2</sup>, a jural immunity is A<sup>3</sup>, and a jural claim is A<sup>4</sup>. The specific jural disadvantages will have a corresponding designation (e. g., a jural liability is, D<sup>1</sup>).]

When it is recalled that each jural or quasi jural advantage may be any one of four distinct varieties:—power, privilege, immunity, claim:—it is readily seen that the permutations expressed in terms of these specific relations will be numerous even in the simple situations above represented. In order that the argument may be better understood, a few of these coincidences will be selected and illustrated in types of case of common occurrence and free from technical difficulty in two aspects: (a) congruence, and (b) conflict:

---

of logical conflict; the 'right' and the duty are not in the father in the same jural relation. The 'right' in the father against the child is a 'power' "to exercise supervision." As against third persons, this supervision is a 'duty, for the father is responsible for the child's unlawful acts (B. C. B. 832).

## SERIES I: CONGRUENT COINCIDENCE

## CLASS: A A — D D

## 1. Claim + Claim : Duty + Duty.

$A^4 A^4 - D^4 D^4$ : Where a creditor receives his debtor's check as conditional payment of the debt. In this case the creditor has two valid claims which are correlated by two legal duties. (Other jural relations also exist here, but they are not now in question. This qualification will not hereafter be repeated.)

$A^4 A^4 - D^4 D^4$ : New promise to pay a debt barred by limitation (where action lies upon the new promise.) In this case the old debt has lapsed by time into a simple claim and the new promise has created a new nexal claim.

## 2. Claim + Immunity : Duty + Disability.

$A^4 A^3 - B^4 B^3$ : Exemption of chattels from levy by execution. In this case, the owner of the chattels has a negative claim, i. e., that the plaintiff do not cause the levy to be made, and a positive immunity that the plaintiff refrain from causing the levy to be made. The immunity is, of course, only the reciprocal of the claim, and its correlative is disability to proceed with the levy with the support of the law. While the sheriff, contrary to the immunity, may proceed to execute, yet that act is not supported by the law and is illegal. It is a simple power act.

$A^4 A^3 - D^4 D^3$ : Where the creditor has a claim secured by mortgage, assuming the rule to be that the debtor cannot even by tender of principal and interest to maturity (though the contrary seems the better rule) demand a release of the security, the claim of the creditor (mortgagee) is nexal, and his immunity against a termination of the relation before maturity of the debt is a simple immunity, since, there is no duty resting in the mortgagor not to terminate it by tender of payment in advance. The mortgagor is simply disabled by the terms of the agreement from making his will effective.

## 3. Claim + Privilege : Duty + Inability.

$A^4 A^3 - B^4 B^3$ : *Negotiorum gestio*, e. g., salvage of a shipwrecked vessel. The salvor has a nexal claim for his services based on his nexal privilege of saving the chattel. Ordinarily, i. e., when things are not in danger of loss or destruction, interference with a thing of another is tortious. Since the situation is an abnormal one, the intermeddling of the salvor is properly called a privilege which is a special variety of power.

$A^4 A^3 - D^4 D^3$ : Bailment of a chattel for labor upon it. The bailee has a nexal claim for his services, and the bailment gives him a simple privilege of improving the chattel. The situation is not like the one last above described where one may intermeddle because of an abnormal situation. What the bailee does is done for his principal, and his acts of dealing with the chattel are not against the will of the principal but in accordance with it. Therefore, he exercises not a nexal but a simple privilege.

## 4. Claim + Power : Duty + Liability.

$A^4 A^3 - D^4 D^3$ : Pledge. The creditor has a nexal claim to payment at maturity of the debt, and a nexal power to sell his security if the debt is not paid.

$A^4 A^1 - D^4 D^2$ : Pledge. The creditor has a nexal claim to payment at maturity of the debt and a simple power to repledge the chattel for a greater sum than the debt.

## SERIES II: CONFLICTING COINCIDENCE

### 1. Claim + Duty : Duty + Claim.

$A^4 D^4 - D^4 A^4$ : Pledge. The creditor has a nexal claim as last above shown, but the debtor also has a nexal claim for the return of the chattel upon making payment or tender of payment. It will be noticed that the conflict here is not in the same jural relation, but between two distinct jural relations. It is also to be emphasized that the conflict is not logical but potential.

$A^4 D^4 - D^4 A^4$ : Pledge. At maturity of the debt, the bailor has a claim (right) to be reasonably notified of the time and place of the sale, if the bailee exercises his power of sale. If the sale is fairly conducted and no loss can be shown on account of the failure to give notice, assuming the rule to be that the bailor cannot recover even nominal damages, his claim to have notice given is a simple claim independent of the event.<sup>22</sup> There is present also a coincident nexal duty to pay the debt.

### 2. Claim + Disability : Duty + Immunity.

$A^4 D^3 - D^4 A^2$ : Where certain chattels are exempt from levy, a landlord though he has a nexal claim to payment of his rent is under a nexal disability to make a distraint on the exempt chattels. The disability is nexal from the fact that an attempt to do the disabled act is a violation of nexal duty.

$A^4 D^3 - D^4 A^2$ : Where an inadvertent wrongdoer has converted a chattel into a new product of great value, assuming the rule to be that the original owner cannot recover the chattel as improved, the original owner in this legal situation has a nexal claim for the value of the chattel converted, but he is under a simple disability to convey the new chattel to a third person (that is to say, such an attempted transfer of title would not be a violation of nexal duty not to do the act; it would be simply ineffective.)

### 3. Claim + Inability : Duty + Privilege.

---

<sup>22</sup> When it is said that a pledgee lies under a duty to give notice of sale of the pledge and that the pledgor has a right to have notice, assuming the rule to be as stated above (see *Whipple v. Dutton*, 175 Mass. 365, 56 N. E. 581, 78 Am. St. Rep. 501 (1900), the statement is an abbreviated and inaccurate one (cf. note 9, *ante*). It is similar to the rule as commonly stated, that a master must provide his servant with a safe place to work, which, also, is inaccurate. There is no nexal duty not to be negligent or not to deceive apart from consequences of actual harm to another (cf. TERRY "LEADING PRINCIPLES," § 111), but there is, no doubt, considerable utility in these abbreviated forms of legal expression as there is also in the emphasis of rights over duties ((cf. Holmes in AM. L. REV. 1871, V, 1, sq. STREET, "FOUNDATIONS," III, 8, sq.), as indexes—nothing more—to legal reasoning.

$A^4 D^2 - D^4 A^2$ : A tenant has a nexal claim against his cotenant not to be interfered with in the tenant's use of a thing, but he is under a nexal disadvantage (inability) to prevent the co-tenant's prior use of the thing. Each may use the thing "when he can see his time."

$A^4 D^2 - D^4 A^2$ : Bailment. Where a chattel has been bailed for improvement, the bailor is under a simple inability while the relation exists to require negative acts of the bailee in performance of the contract, but the bailor has a nexal claim to require negative acts of the bailee inconsistent with the contract.

4. Claim + Liability : Duty + Power.

$A^4 D^1 - D^4 A^1$ : Rescission. If goods are sold by X to Y "on sale or return," before the option of return is exercised, X has a nexal claim but Y has a nexal power to destroy it.

$A^4 D^1 - D^4 A^1$ : In every case where there is a nexal claim (right) the holder of the claim is subject to a simple liability that the bearer of the nexal duty will not perform his duty. The violation of duty is not a nexal power, for while it has legal consequences, the law gives no aid to the wrongdoer. Since the power is not nexal, the correlative of it, likewise, cannot be nexal.

ALBERT KOCOUREK.

*Northwestern University Law School.*