



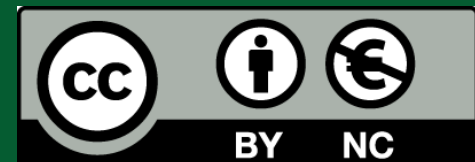
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# Some basic legal concepts

Competences and the legal ought

# Hohfeld's major distinction

- What is a right?
- Rights as permissions
  - John has the right to use Jane's car.
  - Carol has the right to express her opinion.
- Rights as competences
  - Parliament has the right to make laws.
  - Every legal subject has the right to enter into contracts.



WN Hohfeld (1879-1918)

# Deontic concepts

- Deontic concepts: concepts that deal with what ought to be done and what is permitted  
 $\delta\epsilon\omicron\nu$  (*deon*) = what is fitting
- Examples:
  - Ought (not)
    - Petra ought to pay her bill
    - Frank ought not sing aloud
  - Forbidden
    - It is forbidden to park here
  - Permitted
    - Paul is permitted to park his car on the roof
  - Obligation
    - Kim is under a contractual obligation to Frederic to return the book
  - Duty
    - Car drivers have the duty to halt for red traffic lights

# Duties

- Louise has the duty to stop for the red traffic light
- Deontic concept:           duty
- Agent:                    Louise
- Action type:            stop for the red traffic light
  
- **Duties can conflict:** Louise has the duty to stop, but she also has the duty to bring Harold to the hospital asap.
- If duties conflict, they must be **balanced** to determine what the agent **ought to do**.

# Obligations

- Kim is under a contractual obligation to Frederic to return the book
- **Deontic concept:** obligation
- **Agent/Debtor:** Kim
- **Creditor:** Frederic
- **Action type:** return the book
- Obligations are always the result of an **event** (contract, tort).
- **Obligations can conflict:** Kim is under an obligation to return the book, but she is also under an obligation to her daughter to read it to her.
- If obligations and/or duties conflict, they must be balanced to determine what the agent ought to do.

# Ought

- Petra ought to pay her bill
  
- Deontic concept: ought
- Agent: Petra
- Action type: pay the bill
  
- An ought is always the result of an **underlying duty or obligation**. Petra is under a contractual obligation to pay her bill.
- As there is no conflicting duty or obligation, she ought to pay the bill.
- If there is a conflicting duty or obligation, this has to be balanced against the obligation to pay. **The outcome determines what Petra ought to do.**
- An **ought cannot conflict with another ought**, because the balancing takes place on the level of duties or obligations.

# Permissions

An agent is permitted to do something if it is not the case that (s)he ought to refrain from it.

For instance, Fernanda is permitted to eat this piece of chocolate if it is not the case that she ought not to eat the chocolate.

Permission to do something can exist for two reasons:

1. There was no duty or obligation not to do it in the first place.  
E.g. the chocolate belonged to Fernanda and nobody forbade her to eat the chocolate.
2. Somebody created an exception to an existing prohibition.  
E.g. the chocolate belonged to Antonia and Antonia gave Fernanda permission to eat the chocolate.



# Legal powers and competences

- A person has a legal **power** to do something if (s)he can do something because of a legal rule.
  - For instance, Francis has the legal power to commit murder because he can shoot Frank, and there is a legal rule that classifies this shooting as murder.
- Very often, lawyers use the concept of a power for something more specific, namely for a legal **competence**.
- A legal competence is a pre-condition for having the power to bring about legal consequences by means of a **juridical act**.

# Juridical acts

- Juridical acts are
  1. acts,
  2. performed with the intention to bring about particular legal consequences
  3. to which the law attaches most of these consequences
  4. for the reason that they were intended.

Examples of juridical acts:

- a. Contracting
- b. Granting a license
- c. Making a statute
- d. Pronouncing a judicial verdict
- e. Getting married
- f. Imposing a tax obligation

# Competences

- Not everybody can perform any kind of juridical act.
  - Ordinary citizens cannot make statutes, or impose tax obligations
  - Tax inspectors (in their function) cannot marry two (other) persons
  - Members of the administration can (in many countries) not pronounce judicial verdicts
- To have the power to bring about specific legal consequences by means of a particular kind of juridical act, an agent needs the competences:
  - to perform juridical acts of that kind
    - Only judges can pronounce judicial verdicts.
  - to bring about these legal consequences by means of that kind of juridical act.
    - Judges cannot create tax obligations, although they can enforce tax obligations that already exist.

# Rights

- The concept of a right is used for many different purposes.
- One purpose is to express that it is not the case that an agent ought to refrain from some kind of action. Then the agent has the **permission** (right) to perform that kind of action.
- A second purpose is to express that an agent is **competent** to bring about particular legal consequences by means of some kind of juridical act. Then the agent has the competence (right) to perform that kind of juridical act and to bring about these legal consequences by performing that juridical act.
- A third purpose is to express that no agent has the competence to change a legal position of the right holder.
  - For instance, if a legal subject has a right to express her opinion, this does not only mean that she has permission to express her opinion, but also that the state lacks the competence to take this permission away by means of legislation.



The End