Fall 2010

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For as long as I have been at OCU, Professor Schwartz has been considered an enigma by both students and faculty. When I first arrived, he was notorious among the faculty for teaching (or trying to teach) his students the jural categories developed by Wesley Newcomb Hohfeld.[1] In my view, the jural categories are a useful and intriguing way to think about complexities in the law; they are not, however, useful and intriguing to most students. I have never tried to teach Hohfeld's categories and frankly shudder at the thought. One of the most accessible pieces of Hohfeld's vocabulary is the distinction between a power and a right. The holder of a power is able to alter another person's legal relationships, but that power is subject to other people's rights and privileges. The holder of a right, on the other hand, is able to do something without fear of legal consequences. This distinction is useful in teaching agency law: a principal and an agent each have the power to terminate the principal/agent relationship at any time, but because the parties each have only a power and not a right, the terminating party is subject to liability if the termination is a breach of contract or otherwise wrongful. I was therefore pleased that (as I thought) Professor Schwartz taught the Hohfeldian categories; it would make my job in *Agency and Partnership* (as the course was then called) easier. As it turns out, I was misinformed; Professor Schwartz denied teaching Hohfeld, and the students certainly denied ever having heard of the jural categories.[2] I was surprised to learn, however, that many of my colleagues thought that interest in the categories was useless pedantry.

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1. *See* Wesley Newcomb Hohfeld, *Some Fundamental Legal Conceptions as Applied in Judicial Reasoning*, 23 YALE L.J. 16 (1913).

2. I did not give the latter fact much weight, however, in light of the Kenderdine Theorem, which states that "every student under every circumstance will deny ever having heard of any legal concept."

The Hohfeldian-category controversy set the tone for the rest of my acquaintance with Professor Schwartz. He is known for having a peculiar interest in arcana, but the putative arcana always turns out to be (in my opinion) useful or interesting stuff. Fred would amuse himself during meetings by correcting the grammar of the documents that were distributed at the meeting.[3] I would sit behind him and amuse myself by trying to figure out what grammatical errors Fred had identified that I had missed. The fine points of grammar, like the Hohfeldian categories, create a certain beautiful order out of the hurly-burly of human interaction. I would argue the same is true of the system for categorizing future interests in land and, to a lesser extent, the priorities of land titles established by the recording acts. It is now common, even among Property professors, to criticize the existence and teaching of the taxonomy of estates in land and future interests;[4] this is truly regrettable. Surely it is one of the most important roles of the academic to preserve the achievements of the human intellect, such as those that impose order on insane estate plans, spoken English, or the law in general. Professor Schwartz epitomizes the best academic tradition of careful analysis, respect for orderly thinking, and precision. He is the antithesis of the "whatever" culture.[5]

Fred is, or at least appears to be, aloof and detached from his environment.[6] It was therefore several years after I arrived on the faculty before I felt that I knew much about him. My first substantial glimpse of his personality occurred when I sat in on his Property class. I thought the class was excellent, and I thought about how fortunate his students were to have him, rather than me, to teach them Property. After the class, I went to talk to him about the class, and he started the conversation by remarking, "You can say anything to me; I have no pride." I found that an odd and, frankly, implausible statement, but after talking to him for a while, I realized it was true. For Fred, the right answer is what matters,

3. I will therefore maintain that any grammatical errors in this Tribute were introduced during the editing process by people other than the author, whether it is true or not.

4. *See, e.g.*, DUKEMINIER ET AL., PROPERTY 173–84 (6th ed. 2006); Joanne Martin, *The Nature of the Property Curriculum in ABA-Approved Schools and Its Place in Real Estate Practice*, 44 REAL PROP., TR. & EST. L.J. 385, 425 (2009).

5. Surprisingly, I have heard Fred use the "W" word on more than one occasion, but only to dismiss matters irrelevant to the question at hand and expedite arrival at the correct result.

6. Perhaps this characteristic is connected to his intellectual qualities described in the prior paragraph.

and the right answer is not connected to a personality, either his or anyone else's. When he spoke to students in class, he simply told them the truth. This was, sadly, something the students were not used to. In the class I attended, a student answered a question with an irrelevant remark, and Professor Schwartz replied, "That's true, but it isn't what I asked." The student looked mortified,[7] but surely her response should have been, "Oh. What did you ask?" The student, like so many people, was personally invested in *her* answer, rather than in the correct answer. Fred is truly remarkable in being uninfected by this self-centeredness.

This past year I returned to teaching Property after many years away from the subject, and I relied on Fred as a source of both knowledge and good sense. Our exchanges would go something like this:

PJD: According to the casebook, a gift "*To A and her heirs, but if the property is ever used as a tavern, to B and his heirs*" creates a fee simple subject to an executory limitation because B's interest automatically divests A. But we know that if the future interest were retained by the grantor, the gift would create a fee simple subject to a condition subsequent (because of the "but if" structure of the condition), and A's estate would not end unless the grantor took action to enforce the condition. So does the fact that the future interest is granted to a transferee (rather than retained by the grantor) convert a fee simple subject to a condition subsequent to, in effect, a fee simple determinable?

FSS: The mere fact that the future interest was given to a transferee rather than retained by the grantor means that the fee will end automatically. So I suppose that we might say that the fee is, "in effect," a fee simple determinable. But I would resist saying that. [Of course!] The "but if" language still states a condition subsequent, and A's interest is still, therefore, subject to a condition subsequent, but we don't call it a fee simple subject to a condition subsequent because to do so would imply that it is accompanied by a right of entry in the grantor. Because this particular fee-simple-that-happens-to-be-subject-to-a-condition-subsequent is followed

7. Fred had actually spoken quite kindly, but the student apparently did not notice that.

by an executory interest, we call it a fee simple subject to an executory limitation for the sake of precision/unambiguity.

Or[8]

PJD:[9] Consider the following: O grants Blackacre to A; A records the deed. O then grants Blackacre to B, who does not record. B then grants Blackacre to C, who records the B-to-C deed. Someone then records the O-to-B deed. C then grants Blackacre to D. Who wins, D or A? D would have to search the records beyond a normal title search to find the O-to-A deed; is that an unreasonable burden?

FSS: Because A did nothing wrong and everything right (he recorded right away), he simply has to win in any world we'd care to live in. [Extended technical discussion omitted.]

Or my favorite[10]

PJD: The casebook authors suggest two ways that the defendant might have created an easement and avoided the litigation in question: (a) Seller conveys fee simple to defendant, and defendant then conveys fee to plaintiff while reserving an easement to himself; or (b) Seller conveys fee to plaintiff, and plaintiff then conveys easement to defendant. Why not just have Seller convey the easement to the defendant and then the fee to the plaintiff?

FSS: I have always wondered that myself.

I suspect that if one finds these questions less than stimulating, one cannot fully appreciate Fred's finest qualities as a law professor: not only precision and knowledge, but also humor, unfailing patience with and kindness to students (in this case, me), and clarity of thought. He

8. There is a powerful impulse to put a colon here, I realize, but it would be incorrect and I will fight it to the death because Fred may read this.

9. This example is based on a discussion that Fred actually started; he eventually answered his own question better than the rest of us could.

10. *See supra* note 8.

assures me that he will continue to answer my inane property law questions from his retirement retreat, but I fear that without the physical presence of his uncompromising representation of the ideal law professor, we will decline a little more into the sloppiness that looks to become a permanent feature of twenty-first century life.