Distinguishing a Command and a Permission*

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A Trap

The legal thinker can confuse a command with a permission if the legal thinker tries to determine the nature of a law by considering only one polarity of conduct. Considering only one polarity of conduct is a trap. To determine the nature of a law, that is, whether it is a command or a permission - requires a consideration of both polarities of conduct.

A Review of Polarity

Polarity is a property of a flow of conduct from Source to Recipient in circumstances. Polarity is binary, that is, a flow of conduct is either on or off. When on, the flow of conduct is affirmative. When off, the flow of conduct is negative. Moreover, there is no difference between affirmative and negative conduct except its polarity.

Objectionableness of a polarity

Objectionableness refers to whether or not a Lawmaker objects to a polarity of conduct

Objectionableness in a Command

In a command, a Lawmaker wants one polarity of conduct not the other. Hence, to the polarity wanted, a Lawmaker has no objection but to the polarity not wanted, a Lawmaker has an objection. An objection from a Lawmaker to one of the polarities of conduct is the clue to a command.

Objectionableness in a Permission

In a permission, there is an absence of desire in a lawmaker for either polarity of conduct. Hence, in a permission, a Lawmaker has no objection to affirmative conduct and a Lawmaker has no objection to negative conduct. The lack of objection by a lawmaker to both polarities of conduct is the clue to a permission.

A Chart of a Lawmaker's Possible Objections

With regard to each of the two polarities of conduct, a lawmaker can either object or not object. The possibilities available to a lawmaker are charted below:

A Table of a Lawmaker's Objections to the Polarities of Conduct

	Polarity	
		continued on next page

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Flavor of a Law	Affirmative Conduct	Negative Conduct
Permission for either affirmative or negative conduct	A Lawmaker does not object to affirmative conduct	A lawmaker does not object to negative conduct
Command for affirmative conduct	A Lawmaker does not object to affirmative conduct, but, more importantly, desires affirmative conduct	A Lawmaker objects to negative conduct
Command for negative conduct	A Lawmaker objects to affirmative conduct	A Lawmaker does not object to negative conduct, but, more importantly, desires negative conduct
This does not exist. It obliterates rational thought	A Lawmaker objects to affirmative conduct	A Lawmaker objects to negative conduct

Table 1

A Test to distinguish between a Command and a Permission

The detection of an objection by a lawmaker to one polarity of conduct definitively determines that the law is a command. However, the detection of the absence of an objection to one polarity of conduct is ambiguous. A Lawmaker has no objection to one of the polarities of conduct in laws that are both a command and a permission. Hence, when the first polarity is tested and the test returns the absence of a Lawmaker's objection, it is necessary to test the opposite polarity in order to definitively distinguish a command from a permission.

An Example - the Test in Action

One example will suffice[1]. Many think that a green traffic light indicates that a motorist is permitted to go. Although a lawmaker has no objection to a motorist "going" at a green light, a lawmaker objects to a motorist "not going" a\k\a "stopping" at a green light. Because one of the polarities is objectionable and the other is not, we are dealing with a command not a permission. It takes two unobjectionable polarities to make a permission. A lawmaker desires a motorist to go at a green light. Hence, a motorist is commanded to go at a green light.

[1] "Test Your Legal Literacy by Answering One Question" <http://cnx.org/content/m35292/latest/>