An Application of the Theory: Evidence Part 1*

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The Example

At this juncture, an example showing the nitty gritty of making a law may be helpful. Let us examine the making of a law of evidence.

Four Objects ought to be kept in mind in the process of making a law

Four objects need to be kept in mind in the process of making a law. The one factual object which is a flow of conduct from Source to Recipient through circumstances and the three legal objects which are the three permutations of a law.

The Initial Legal Mindset

A Unified Theory of a Law recommends that the legal thinker begin an acquisition of the meaning of a law with the three core permutations of a Law in mind:

- regulation of affirmative conduct
- deregulation
- regulation of negative conduct

The Initial Factual Mindset

Moreover, identify both polarities of a flow of conduct from Source to Recipient in circumstances, that is, the affirmative conduct and the negative conduct. Do not work with just one polarity alone.

The Characters on the Factual Stage

Onto the stage let us meet three characters:

- a proponent of an item of evidence
- an opponent of an item of evidence and
- a judge who rules on whether the item of evidence is admissible.

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The Conduct on the Factual Stage

Let us identify the conduct to be the rulings of a Trial Judge. The affirmative conduct is the admission of an item into evidence and the negative conduct is the exclusion of an item from evidence. The Source doing conduct is, obviously, a Trial Judge.

Application of the Law to the Facts

A Unified Theory of a Law teaches that the three core permutations of a Law available for application to this flow of conduct from Source to Recipient in the circumstances are the following.

1. A Lawmaker wants the Trial Judge to admit an item into evidence (affirmative regulation)
2. A Lawmaker wants the Trial Judge to exclude an item from evidence (negative regulation)
3. A Lawmaker lacks the desire for the Trial Judge to admit an item into evidence and lacks a desire for the Trial Judge to exclude an item of evidence (deregulation)

For those keeping track of our location within *A Unified Theory of a Law*, the three core permutations of a law above are expressed as opinions not vehicles when the focus of the Lawmaker is broad spanning the entire flow of conduct from Source to Recipient in circumstances. The three core permutations of a law could alternately be expressed using vehicles not opinions and from the other two focuses (foci) of the Lawmaker.

The Proponent

The hypothesis advocated by the proponent is that the trial judge has a duty to admit an item into evidence (affirmative regulation).

A Proponent must prove his hypothesis by citation to Statutes, Judicial Opinions and other precedents.

For those keeping track of our location within *A Unified Theory of a Law*, we have been using vehicles not opinions of a Lawmaker whose focus is upon the Source of conduct.

The Opponent

The hypothesis of the opponent is that the trial judge has a duty to exclude an item from evidence (negative regulation).

An Opponent must prove his hypothesis by citation to Statutes, Judicial Opinions and other precedents.

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The Trial Judge

To prevent the abuse of power, we enmesh our trial judges within a web of laws. In other words, we fetter their discretion. We prefer the rule of laws rather than the rule of a tyrant. The law of evidence informs a trial judge with regard to her rulings on the admission and exclusion of evidence.

The Trial Judge, like a scientist, will test the hypothesis of the proponent and the opponent of an item

of evidence. Then the Trial Judge will pick one permutation of a law and reject the other.

Notice that neither the proponent nor the opponent advocate Deregulation. Leaving the ruling on the admission and exclusion of an item of evidence to the discretion of the Trial Judge would be absurd. There would be no certainty in the law of evidence. Without certainty, the proponent, the opponent, future litigants and trial judges would be lost. The trial judges would have absolute power. Lord Acton would not be pleased.

> ASIDE: "I cannot accept your canon that we are to judge Pope and King unlike other men with a favourable presumption that they did no wrong. If there is any presumption, it is the other way, against the holders of power, increasing as the power increases. Historic responsibility has to make up for the want of legal responsibility. All power tends to corrupt and absolute power corrupts absolutely. Great men are almost always bad men, even when they exercise influence and not authority: still more when you superadd the tendency or certainty of corruption by full authority. There is no worse heresy than that the office sanctifies the holder of it. " John Emerich Edward Dalberg-Acton [1]
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> Every trial judge ought to be reminded of this. A trial judge is a servant of the law not a king of the law. Unfortunately, not a few deem themselves king instead of servant, above the rule of law rather than enmeshed within it.

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[1] http://en.wikipedia.org/wiki/John_Dalberg-Acton,_1st_Baron_Acton
[2] http://www.legalliteracyproject.com/