

附錄四 RIGHT 與 PRIVILEGE 之定義

RIGHT

1. That which is proper under law, morality, or ethics <know right from wrong>.
2. Something that is due to a person by just claim, legal guarantee, or moral principle <the right of liberty>.
3. A power, privilege, or immunity secured to a person by law <the right to dispose of one's estate>.
4. A legally enforceable claim that another will do or will not do a given act; a recognized and protected interest the violation of which is a wrong <a breach of duty that infringes one's right>.
5. (*often pl.*) The interest, claim, or ownership that one has in tangible or intangible property <a debtor's rights in collateral> <publishing rights>.
6. The privilege of corporate shareholders to purchase newly issued securities in amounts proportionate to their holdings.
7. The negotiable certificate granting such a privilege to a corporate shareholder.

"Right is a correlative to duty; where there is no duty there can be no right. But the converse is not necessarily true. There may be duties without rights. In order for a duty to create a right, it must be a duty *to act or forbear*. Thus, among those duties which have rights corresponding to them do not come the duties, if such there be, which call for an inward state of mind, as distinguished from external acts or forbearances. It is only to acts and forbearances that others have a right. It may be our duty to love our neighbor, but he has no right to our love." John Chipman Gray, *The Nature and Sources of the Law* 8-9 (2d ed. 1921).

"[T]he word 'right' is one of the most deceptive of pitfalls; it is so easy to slip from a qualified meaning in the premise to an unqualified one in the conclusion. Most rights are qualified." (*American Bank & Trust Co. v. Federal Reserve Bank of Atlanta*, 256 U.S. 350, 358, 41 S.Ct. 499, 500, 1921.) (Holmes, J.).

"[In Hohfeldian terminology,] A is said to have a *right* that B shall do an act when, if B does not do the act, A can initiate legal proceedings that will result in coercing B. In such a situation B is said to have a *duty* to do the act. *Right* and *duty* are therefore correlatives, since in this sense there can never be a duty without a right." E. Allen Farnsworth, *Contracts* § 3.4, at 114 n.3 (3d ed. 1999).

PRIVILEGE

1. A special legal right, exemption, or immunity granted to a person or class of persons; an exception to a duty. • A privilege grants someone the legal freedom to do or not to do a given act. It immunizes conduct that, under ordinary circumstances, would subject the actor to liability.
2. An affirmative defense by which a defendant acknowledges at least part of the conduct complained of but asserts that the defendant's conduct was authorized or sanctioned by law; esp., in tort law, a circumstance justifying or excusing an intentional tort.
3. An evidentiary rule that gives a witness the option to not disclose the fact asked for, even though it might be relevant; the right to prevent disclosure of certain information in court, esp. when the information was originally communicated in a professional or confidential relationship. • Assertion of a privilege can be overcome by proof that an otherwise privileged communication was made in the presence of a third party to whom the privilege would not apply.
4. *Civil law*. A creditor's right, arising from the nature of the debt, to priority over the debtor's other creditors.
5. *Parliamentary law*. The status of a motion as outranking other business because of its relationship to the meeting's or a member's rights. -- Also termed *parliamentary privilege*.

