

# Legal Analysis *and* Writing

*Third Edition*

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## CHAPTER 3

# Statutory Analysis

### Outline

- I. Introduction
- II. Anatomy of a Statute
- III. Statutory Analysis: The Process
- IV. General Considerations
- V. Key Points: *Working with Statutes*
- VI. Application

### Learning Objectives

After completing this chapter, you should understand:

- What statutory law is
- The components of a statute
- How to analyze a statute and apply it to specific problems
- The role of legislative history and canons of construction



Until recently, Cecil's assignments at the law firm have been to prepare deposition digests. He is good at what he does but wants to be involved in projects in the early stages of the litigation process. At his request, he has been assigned to work exclusively with Ms. Tilton. Ms. Tilton is a litigation attorney who specializes in corporation and contract law.

His first assignment from Ms. Tilton is to determine whether Mrs. Jackson has a cause of action against Beauty Care beauty salon for breach of warranty under the sales provisions of the state's commercial code. Mrs. Jackson went to her hairdresser, Beauty Care beauty salon, to get their "special long-term hold" permanent. Once a year for the past three years she has asked for the "special" permanent. Beauty Care made no warranties about the

permanent. It did not provide Mrs. Jackson, either in writing or orally, any statements concerning the quality of the permanent. The receipt she received for the permanent listed a twenty-dollar charge for the permanent kit and other products and an eighty-dollar charge for the services of the beautician.

Three days after Mrs. Jackson was given the permanent, her hair, which had been blond, turned a light green. Five days later, it broke off approximately one inch from the scalp—not a good result.

Cecil, based on his experience as a paralegal, is aware that Mrs. Jackson has a possible tort negligence claim and other possible causes of action against Beauty Care. But his assignment is to determine whether there is also a possible breach of warranty claim under the state's commercial code.

Cecil's research indicates that the Commercial Code Sales Act applies only to the sale of goods and includes three warranties that may apply in Mrs. Jackson's case. Cecil has not worked with statutes since he obtained his associate's degree in

paralegal studies. Several questions occur to him: Does the act apply? Is this a sale of goods within the meaning of the act? If this is a sale of goods, which warranty applies? How do you analyze a statute?

## I. INTRODUCTION

This chapter focuses on how to analyze enacted law. As discussed in Chapter 1, enacted law includes constitutions (governing documents adopted by the people), laws passed by legislative bodies, and the rules and regulations adopted by administrative agencies.

Laws passed by Congress or state legislatures are generally called acts or statutes. This body of law is commonly referred to as **statutory law**. Ordinances are laws usually passed by local governing bodies, such as city councils and county commissions. Administrative agencies, under the authority granted by legislative bodies, adopt rules and regulations that have the force of law. Courts adopt rules that regulate the conduct of matters brought before the court. For the sake of clarity, throughout this chapter the discussion and examples focus on laws passed by legislative bodies, statutory law. Note, however, that the principles presented in the chapter apply to the analysis of constitutions, statutes, administrative law, and court rules.

A paralegal must become familiar with statutory law to conduct legal research and analysis. Statutory law has assumed an ever-increasing role in the United States. With the passage of time, the body of law represented by statutory law has expanded greatly. Many matters once governed by case law are now governed by statutory law.

**For Example** Criminal law was once exclusively established and regulated by case law. Today, however, most criminal law is governed by statutory law.

With the growth of statutory law, more and more legal problems and issues are governed by it. Since an increasing number of legal problems and issues require the interpretation and application of statutory law, paralegals are more frequently called upon to engage in statutory analysis. **Statutory analysis** is the process of determining whether a statute applies, how it applies, and the effect of that application.

Because most statutes are designed to cover a broad range of present and future situations, they are written in general terms. As a result, a paralegal is required to engage in statutory analysis to determine whether and how a statute applies in a specific fact situation.

The focus of this chapter is the process of statutory analysis. It begins with a presentation of the anatomy of a statute, follows with a discussion of the process of statutory analysis, and ends with general considerations involving statutory construction and analysis.

## II. ANATOMY OF A STATUTE

Before you can analyze a statute, you must be familiar with the basic structure of statutory law, the component parts. Assume, for the purposes of illustration, that

### statutory law

The body of law composed of laws passed by legislative bodies. The term includes laws or ordinances passed by any legislative body.

### statutory analysis

The interpretation and application of statutory law. The process of determining whether a statute applies to a specific fact situation, how it applies, and the effect of that application.

you are interested in whether a contract for the sale of goods must be in writing, and the governing law is the Indiana Code. Exhibit 3–1 shows selected portions of the Indiana Code concerning commercial law. To the left of the sections of the code (in the margins) are terms that describe the components of the code. The following text discusses each descriptive term and that portion of the statute referred to by the term.

Not all of the statutory components included in the discussion of the Indiana Code in Exhibit 3–1 are included in every statute. Some statutes, for example, may not have a definition section. It is important, however, to discuss the components here so you will be familiar with them if you encounter them in other statutes.

### A. Number

Every statute has numbers assigned to each section of the statute. Each legislative authority—local, state, and federal—follows a different numbering system.

Therefore, it is not practical to discuss separately each numbering system. There are some general similarities, however, that can be addressed. Most laws are divided into broad categories, each of which is assigned a **number**. Those broad categories are divided into topics or smaller categories that are also assigned numbers. The topics are further divided into subtopics, each of which is assigned a number, and so on. The number of categories and divisions depends on the statutory scheme of the particular legislative authority.

#### For Example

The laws of Indiana are divided into broad categories called titles. Commercial law is assigned the number 26. (See Number of Title at the top of the first page of Exhibit 3–1.) Each title is divided into areas called articles. Commercial law in the Indiana Code is divided into three articles, numbered 1, 2, and 3. The Uniform Commercial Code article, which governs commercial transactions, is assigned the number 1. The three articles are listed under COMMERCIAL LAW. (See Number of Article at the top of the first page of Exhibit 3–1.) Article 1, the Uniform Commercial Code, is divided into ten chapters. They are listed under UNIFORM COMMERCIAL CODE. (See Number of Chapter on the first page of Exhibit 3–1.) The chapter governing the sale of goods is Chapter 2 (Sales). Each chapter is divided into sections, and each section is assigned a number. (See Number of Section in Exhibit 3–1.) Each section contains the actual law that governs a subject. The section of Chapter 2 (Sales) that establishes when a contract must be in writing is assigned the number 201. This section is called Formal requirements—Statute of Frauds (see § 26-1-2-201 on the second page of Exhibit 3–1).

Therefore, if you want to read the law in the Indiana Code governing when a contract must be written, you refer to title 26 (Commercial Law), article 1 (Uniform Commercial Code), Chapter 2 (Sales), section 201 (Statute of Frauds). This is usually referred to numerically as § 26-1-2-201, Statute of Frauds.

### B. Short Title

The **short title** is the name by which the statute is known. It is a name that is easy to use when referring to the statute. Included in Exhibit 3–1 are examples of two short titles in the Indiana Code: the short title of article 1, Uniform Commercial Code (§ 26-1-1-101), and the short title of Chapter 2, Uniform Commercial Code—Sales (§ 26-1-2-101). (See Short Title on the first and second pages of Exhibit 3–1.)

#### short title

The name by which a statute is known (e.g., Uniform Commercial Code—Sales).

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**purpose clause**

A statutory section that includes the purpose the legislative body intended to accomplish when drafting the statute.

**scope**

A statutory section that states what is covered and not covered by the statute.

*C. Purpose Clause*

The **purpose clause** includes the purpose the legislative body intended to accomplish when drafting the statute. It is helpful in determining the legislative intent. (See Purpose Clause in Exhibit 3–1, § 26-1-1-102.)

*D. Scope*

Some statutes have sections that state specifically what is and is not covered by the statute. These are called **scope** sections. A paralegal should first review this section when analyzing a statute, because a review of this section may lead to a determination at the outset of whether the statute applies. (See Scope in Exhibit 3–1.)

**For Example**

You are researching a question under Indiana law involving a contract that grants a security interest in goods that are being sold. The scope section of the Uniform Commercial Code, § 26-1-2-102, provides that the section does not apply to such transactions. You know at the outset that the state Uniform Commercial Code does not apply and that it need not be considered further.

*E. Definitions*

Some statutes have **definitions** sections that define terms used in the statute.

The definitions are helpful in determining the parties and situations covered by the provisions of the statute. (See Definitions in Exhibit 3–1, § 26-1-1-301.)

*F. Substantive Provisions*

The substantive sections set forth the substance of the law. (See Substantive Provisions in Exhibit 3–1.) They establish the rights and duties of those governed by the statute: what is required, prohibited, or allowed. A substantive section of the Indiana Code addresses the question posed at the beginning of this chapter, “When must a contract for the sale of goods be in writing?” (See § 26-1-2-201 in Exhibit 3–1.)

The substantive sections may include sections that provide remedies, such as fines or imprisonment in criminal cases. There may be sections governing procedure, such as which court has jurisdiction over the matters covered by the statute. The substantive provisions are what you usually refer to when addressing the client’s legal problem.

*G. Other Provisions*

Not included in the example in Exhibit 3–1 are other types of statutory sections you may encounter.

**For Example**

There may be statutory provisions that:

- State which administrative agency is responsible for administering the act.
- Incorporate by reference sections of other statutes.
- Limit the application of the statute through exceptions.
- Establish when the statute takes effect.
- Repeal other statutes.
- State that the statute is cumulative to the case law and other remedies still exist.

## H. Reference Information

Following each section of a statute, in small print, are references to various sources of information related to the section. These source notes are usually referred to as annotations. They include:

- The history of the section, including dates of amendment. They may also include summaries of the amendments and previous statutory numbers if the section number has changed owing to a recodification.
- Official comments on the section.
- Cross-references to related statutes. (See the last page of Exhibit 3–1.)
- Library references/research guides—References to other sources that may be useful when analyzing the statute, such as books, digest key numbers (see Chapter 5), law review and other articles, *American Law Report* (ALR) cites, and legal encyclopedia cites that discuss the section (*Corpus Juris Secundum*, *American Jurisprudence Second*, etc.). (See the last page of Exhibit 3–1.)
- Notes to decisions—The name, citation, and summaries of key court decisions that have discussed, analyzed, or interpreted the statute. When a statute has been interpreted or referred to in a large number of cases, the cases are indexed according to subject and each category is assigned a number. If you have a question concerning the interpretation of a statute, by scanning the notes you may immediately locate a case on point. This often saves time spent in locating a case through other means. (See the last pages of Exhibit 3–1.)

Annotations are sources of information and are not part of the statute. They are not the law and do not have legal authority. (See Reference Information in Exhibit 3–1.)

It is easier to work with statutes after establishing a familiarity with the component parts. The material presented here will help you gain that familiarity, but the greatest familiarity comes with practice. Choose a subject you are interested in and read the statute in your jurisdiction that governs the area.

## III. STATUTORY ANALYSIS: THE PROCESS

The analysis of enacted law and court rules is a process of determining whether a law applies, how it applies, and the effect of that application to a specific fact situation. When analyzing a legal problem or addressing an issue that is governed by constitutional, statutory, or administrative law provision or a court rule, it is helpful to have an approach, an analysis process. This process allows you to approach the matter in a way that efficiently solves the problem in the least amount of time, with the least confusion, and with the greatest accuracy. For the sake of clarity, throughout this section the discussion and examples focus on laws passed by legislative bodies, statutory law. Note, however, that the principles presented here apply to the analysis of constitutions, statutes, administrative law, and court rules.

It is recommended that the three-step approach presented in Exhibit 3–2 is followed when addressing a legal problem or issue governed by statutory law. These steps may be summarized as follows:

**Step 1** Determine whether the statute applies in any way to the legal problem or issue.

**Step 2** Carefully read the statute and identify the required elements.

**Step 3** Compare or match the required elements to the facts of the problem and determine how the statute applies.

These steps are a helpful approach to statutory analysis, although in some instances a step may be unnecessary—for example, step 1 is unnecessary if you already know that the statute applies—and in other instances, a different approach may be required. Each step in this recommended approach is discussed separately in what follows.

**Step 1** Determine whether the statute applies.

- Part 1. Locate all possible applicable statutes.
- Part 2. Determine which statutes apply.

**Step 2** Analyze the statute.

- Part 1. Read the statute.
- Part 2. Identify the statutory elements—what does the statute specifically declare, require, or prohibit.

**Step 3** Apply the statute to the legal problem or issue.

- Chart format
- Narrative format

### Exhibit 3-2

*Statutory Analysis:  
Three-Step Approach*

#### A. Step 1: Determine Whether the Statute Applies

The first step in the process is to determine which law, if any, covers the legal issue raised by the client’s fact situation. The first task, then, is to determine which statute or statutes govern the question.

This step involves two parts:

- Part 1 Locate all applicable statutes
- Part 2 Determine which statutes apply

##### 1. Part 1: Locate All Applicable Statutes

Before you can determine if whether a particular statute applies, you first must locate all statutes that possibly apply. The location of one applicable statute does not mean you should stop your search. Make sure your research is thorough and complete. Continue researching until you are confident that all areas of law that may govern the problem have been explored and all potential applicable statutes located. Some matters are covered by more than one statute.

**For Example** The client’s case may involve the validity and enforceability of a small loan contract. There may be several statutes that govern the enforcement of such contracts: the federal Truth-in-Lending Act, the state Small Loan Act, and the state Usury Act.

##### 2. Part 2: Determine Which Statutes Apply

Determine whether each statute applies by asking yourself, “Does the general area of law covered by this statute apply to the issue raised by the facts of my client’s case?” You can usually answer this question by referring to the scope section of the statute, the definitions section, or case law.

Reference to the scope section of the statute will often answer the question of whether the statute applies.

**For Example** The problem involves the validity of a contract for the sale of a security interest in a car. The scope section of the Commercial Code—Sales statute provides, “This chapter does not apply to any transaction which . . . is a sale of a security interest or intended to operate only as a security transaction . . .” Reference to this section clearly indicates that such transactions are not covered by this statute. If the facts involved the sale of the car, rather than the sale of a security interest in the car, the statute might apply.

Often, reference to the definitions section of a statute will help you determine whether a statute applies.

**For Example** The legal problem involves the sale of a farm. The question of whether this sale is governed by the provisions of the Commercial Code—Sales statute is answered by reference to the definitions section of the statute. In that section, goods are defined as “all things which are movable at the time of the contract for sale . . .” The statute clearly does not apply to the sale of a farm.

In some instances, reference to case law may be necessary to determine whether a statute governs a situation.

**For Example** Suppose the client’s case involves the lease of goods, and neither the scope nor definitions section of the Commercial Code—Sales statute indicates whether the term sale includes a lease of goods. Reference to case law may be necessary. Court decisions often define terms not defined in a statute.

Note that often the relevant case law may be located by looking to the reference information following the section of the statute.

It may be that two laws govern a legal question. In this event, two causes of action may be available.

**For Example** A small loan may violate provisions of both the federal Truth-in-Lending Act and the state usury law. In this case, there may be a cause of action under the federal law and a cause of action under the state law.

If this occurs, steps 2 and 3 would be followed in regard to each statute.

When determining whether a statute applies, always check the effective date of the statute to be sure that the statute is in effect. This is usually found in the statute itself or in the historical notes or comments in the reference sections following the statute. Also, always check the supplements to the statute to make sure that the statute you are researching is the latest version. Supplementary material published after the publication of the main text is often located immediately following the statute or in a separate section or pamphlet. The supplements include any changes in the statute or reference material that have occurred since the publication of the book containing the statute.

## B. Step 2: Analyze the Statute

After you determine that a statute applies, you must carefully read and analyze the statute to determine how it applies. Some statutes are lengthy and difficult to understand. You may need to check the library references to locate other library sources that explain and interpret the statute. It may be necessary to make a chart to assist you in understanding the specific provisions and operation of a statute. Step 2 involves two parts that are addressed in the text that follows:

- Part 1 General concerns when reading statutory law
- Part 2 Statutory elements—What does the statute specifically declare, require, or prohibit?

### 1. Part 1: General Concerns

*Several general concerns should be kept in mind when reading statutory law:*

1. Read the statute carefully several times.
2. Does the statute set a standard or merely provide factors that must be considered?
3. Does the statute provide more than one rule or test? Are other rules or tests available? Are there exceptions to the rule or test?
4. All the words and punctuation have meaning. Always check the definitions section for the meaning of a term. If there is no definition, consult case law, a legal dictionary, or *Words and Phrases*. Do not assume you know what a term means. Your assumption may be wrong. A legal term may have several meanings, some of which may be unknown to you.

**For Example** The word *publication* in tort law means more than presentation in the print or visual media. It means communication to a third party by any means. Under this definition, two neighbors gossiping over a backyard fence can constitute publication.

All punctuation counts. If you cannot understand how to read a statute, consult a secondary source, such as a treatise or legal encyclopedia.

5. Review the entire statute (all sections) to determine whether other sections in some way affect or relate to the section you are researching.

**For Example** Section 611-9 of a statute provides:

- (a) A will that does not comply with Section 611-8 is valid as a holographic will if the signature and the material provisions are in the handwriting of the testator.
- (b) If a holographic will does not contain a statement as to the date of its execution and it is established that the testator lacked testamentary capacity at any time during which the will might have been executed, the will is invalid unless it is established that it was executed at a time when the testator had testamentary capacity.

- (c) Any statement of testamentary intent contained in a holographic will may be set forth either in the testator's own handwriting or as part of a commercially printed form will.

Note that a holographic will is a will written by the testator in his or her own handwriting and not witnessed. Subsection (a) sets the standard for when a holographic will is valid. Subsection (b), however, addresses a situation that affects the validity of a holographic will even if the requirements of subsection (a) are met. Subsection (c) establishes how testamentary intent may be set forth.

The preceding example illustrates a point that cannot be overemphasized: *Read and consider all parts of a statute*. Suppose the legal question is, "What is required for a holographic will to be valid?" If you stopped reading the statute at subsection (a) because it appeared to answer your question, you would miss the other provisions that also affect the answer to the question. Always read the entire statute.

6. Certain common terminology must be understood. Be aware of the meaning of commonly used terms such as *shall*, *may*, *and*, and *or*.

*Shall* makes the duty imposed mandatory. It must be done. *May* leaves the duty optional. If *and* is used, all the conditions or listed items are required. If the term *or* is used, only one of the conditions or listed items is required.

**For Example** Section 24-6-7-9 of a statute provides, "A person is concerned in the commission of a crime if he:

- a. directly commits the crime;
- b. intentionally causes some other person to commit the crime; or
- c. intentionally aids or abets in the commission of the crime."

The use of *or* in this example means that a person is covered by the statute if he or she does *any* one of the listed acts.

**For Example** Section 50-9-1 of a statute provides that holographic wills are valid if they are:

- a. entirely in the handwriting of the testator, and
- b. signed by the testator.

The use of *and* in this statute means that both conditions must be met for the will to be valid.

7. Keep in mind the canon of constructions when reading. These are presented in the General Considerations section of this chapter.

## 2. Part 2: Statutory Elements

*What does the statute specifically declare, require, or prohibit?* Once you have carefully read the statute, analyze the section of the statute in question. How does the statute ap-



**statutory elements**

The specific conditions of a statute that must be met for the statute to apply.

ply? Ask yourself, “What specific requirements must be met for the statute to apply? What are the elements?” For a statute to apply, certain conditions established by the statute must be met. These conditions or components of the statute are called **statutory elements**. After the elements have been identified, you can determine how the statute applies.

After you have a sufficient understanding of the statute, begin this part of step 2 by breaking down the statute into its elements. Identify and list the elements that must be met for the statute to apply. This is necessary because you must know what the elements are before you can proceed to step 3 and apply them to the legal problem or issue raised by the client’s facts.

Identify the elements or requirements of the statute by reading the entire statute, analyzing each sentence word by word, and listing everything that is required. This includes listing all the various conditions and exceptions contained in the subsections of the statute in question and the conditions and exceptions included in other statutes that may affect the statute in question.

**For Example** Consider section 2-2-315 of the Commercial Code—Sales Act of state X: Where the seller at the time of contracting has reason to know any particular purpose for which the goods are required and the buyer is relying on the seller’s skill or judgment to select or furnish suitable goods, there is an implied warranty that the goods shall be fit for such purpose.

Read the statute in the preceding example sentence by sentence and determine the elements. For the implied warranty of section 2-2-315 to apply, the following requirements must be met:

1. *The person must be a seller of goods.* How do you know “of goods” is required? Section 2-2-315 quoted in the preceding example does not read “seller of goods” but refers only to “the seller.” You know “of goods” is required because in step 1, in order to determine whether the statute applied to the issue in the client’s case, you reviewed the scope section of the act. It provides that the act applies only to the sale of goods.

How is the term *goods* defined? Assume the term is defined in the definitions section of the Commercial Code—Sales as “all things movable at the time of sale.” The statute also requires the individual to be a “seller.” How is seller defined in the definitions section of the act? Assume the term is defined as “anyone who sells goods.”

2. *The seller has reason to know the purpose for which the goods are required.* For the act to apply, the seller must have reason to know of the purpose for which the buyer wants the goods. The statute does not require actual knowledge on the part of the seller. It provides only that the seller must have “reason to know.” You may need to refer to case law to determine what “reason to know” means or requires.
3. *The seller has reason to know the buyer is relying on the seller’s skill or judgment.* This is usually established by the words or actions of the buyer that indicate to the seller the buyer’s reliance on the seller’s skill or judgment.
4. *The buyer must actually rely on the seller’s skill or judgment in furnishing suitable goods.* This is required because the statute provides “the seller ... has reason to know ... that the buyer is relying ....”
5. *The seller must have known of the purpose for which the goods were required and the buyer’s reliance on the seller’s skill or judgment in furnishing the goods at the time the*

*sale was taking place, not later.* This is required because the statute provides “the seller *at the time of contracting ...*”

Be sure to complete both parts of step 2 before proceeding to step 3.

### C. Step 3: Apply the Statute to the Legal Problem or Issue

After you have identified the elements, which are the conditions necessary for the statute to apply, apply the elements to the legal problem or issue raised by the client’s fact situation. This entails applying or matching the facts of the client’s case to the elements of the statute.

This step may be accomplished in several ways. One way is to prepare a chart that lists the elements of the statute. Next to this, list the facts from the client’s case that match or establish each of the elements or requirements of the statute. Another way is to prepare a narrative summary of the elements and how the facts of the case match or establish the elements. The following sections use examples to illustrate the performance of step 3 in both chart and narrative summary format.

#### 1. Chart Format

In the following example, a **chart format** is used.

**For Example** Tom goes to the local hardware store and informs the salesperson that he needs to grind metal with a power metal grinder. He tells the salesperson that he needs goggles to protect his eyes. The salesperson, after looking through his stock, hands Tom a pair of goggles and tells him, “These are what you need.” Tom purchases the goggles, and when he uses them, a piece of metal pierces the lens of the goggle and damages Tom’s eye.

Can Tom state a claim under the provisions of the implied warranty statute, section 2-2-315, presented in the previous example? How does the statute apply?

#### Statutory Elements

1. Seller of goods
2. Has reason to know the purchasing the goods
3. Has reason to know of buyer’s reliance on seller’s judgment
4. Reliance by buyer on seller’s skill or judgment
5. At the time of contracting

#### Facts of Client’s Case

The seller was a salesperson at the local hardware store, a seller within the meaning of the statute. The item sold, goggles, meets the definition of goods. (The goggles are “things movable at the time of sale.”) Tom explicitly told the seller his purpose for buyer’s purpose in buying the goggles.

This is implied from Tom’s conduct of allowing the seller to select the goods without any input from Tom.

Tom relied on the salesperson’s judgment. He indicated the purpose and accepted, without independent judgment or act, what the seller selected.

The seller knew at the time of the sale, not later, of Tom’s purpose and reliance.



After the elements of the statute have been identified and the facts of the client's case compared and matched with the required elements of the statute, you can determine how the statute applies. In this example, you can conclude that the conduct of the salesperson is covered by the statute and that an implied warranty was created. All the required elements of the statute are established by the facts in Tom's case:

1. The salesperson was a seller within the meaning of the statute, and the items sold were goods.
2. At the time of the sale, the seller was informed by the buyer of the specific purpose for which the goods were being purchased.
3. The seller knew of the buyer's reliance on his skill and judgment.
4. The buyer relied on the expertise and judgment of the seller.
5. The seller knew at the time of the sale, not later.

## 2. Narrative Summary

In the following example, a **narrative summary** is used rather than a chart.

**For Example** Section 56-6-1 of the Open Meetings Act provides that "all meetings of two or more members of any board ... at which any public business is discussed or at which any action may be taken or is taken are declared to be public meetings open to the public." The section further provides:

"a. Such meetings shall be held only after full and timely public notice."

"b. This section does not apply to chance meetings or social gatherings at which discussion of public business is not the central purpose."

Ida and Dan are members of a three-person state board. They run into each other at a Christmas party and discuss board business.

Is this meeting an open meeting governed by section 56-6-1? The application of step 2 reveals an open meeting is required by the statute when the following elements are present:

1. Two or more board members
2. meet at other than a chance or social gathering where discussion of public business is not the central purpose, and
3. public business is discussed or action may be or is taken.

A narrative summary of the elements and the application of the statute to the facts illustrates step 3:

1. Two or more board members. This element is met. Both Dan and Ida are board members.
2. Meet at other than a chance or social gathering where discussion of public business is not the central purpose. It appears that this element is not met by the facts. This was a social gathering and also possibly a chance meeting. The gathering was a Christmas party. It does not appear that the discussion of public business was the central purpose. If it is discovered that the sole reason they went to the party was to discuss public business, the exclusion in subsection (b) of the statute probably does not apply and the meeting may be covered by the act.

3. Public business is discussed or action may be or is taken. This element is met. Public business was discussed.

After performing step 3, it appears that this was not a public meeting within the meaning of the act. Although the requirements of the first and third elements are met (two or more board members met and discussed public business), the requirements of the second element are not.

When performing step 3, remember to match the client's facts with the required elements of the statute. When this is accomplished, you can determine how the statute applies. In the example concerning the purchase of goggles and the sale of goods, all the required statutory elements were met by the facts of the client's case, and an implied warranty was created. In the public meetings example, the facts did not meet the requirements of the second element of the statute, and therefore the meeting was not a public meeting within the meaning of the statute.

#### ***D. Summary of the Statutory Analysis Process***

The three steps presented in this section are a useful approach to statutory analysis. These steps may be summarized as follows:

**Step 1** Determine whether the statute applies in any way to the legal problem or issue.

**Step 2** Carefully read the statute and identify the required elements.

**Step 3** Compare or match the required elements to the facts of the problem and determine how the statute applies.

In addition to this three-step approach, there are other general considerations to keep in mind when analyzing statutory law. These considerations are presented in the following section.

### **IV. GENERAL CONSIDERATIONS**

*Always* keep in mind two major considerations and guidelines when engaged in statutory analysis:

1. Legislative history
2. Canons of construction

These considerations come into play, and are of the greatest importance, when the meaning of the statute is unclear and the meaning has not been determined by a court.

When required to interpret a statute, a court will first look to the plain meaning of the language of the statute. This is called the **Plain Meaning Rule**. The rule mandates that a statute will be interpreted according to its plain meaning. Words will be interpreted according to their common meanings. The court will render an interpretation that reflects the plain meaning of the language and is consistent with the meaning of all other sections of the act. If the meaning is clear on its face, no additional inquiries concerning the meaning of the statute are allowed. If there is ambiguity in the meaning of a statutory section, the court will look to the legislative history of the statute and apply canons of construction.

When engaging in statutory analysis, you should be aware of and keep in mind the considerations that the court applies when interpreting the meaning of a statute. The reason for this is obvious: You want your interpretation of the meaning of the statute and how it will be applied to coincide with that of the court. Each of these considerations is addressed in this section.

#### **Plain Meaning Rule**

A canon of construction that provides that if the meaning of a statute is clear on its face, it will be interpreted according to its plain meaning and the other canons of construction will not be applied by the court.

**legislative history**

The record of legislation during the enactment process. It is composed of committee reports, transcripts of hearings, statements of legislators concerning the legislation, and any other material published for legislative use in regard to the legislation.

**A. Legislative History**

To determine the meaning of a statute, a court may look to the **legislative history** of the statute to discover what the legislature intended it to mean. Legislative history is the record of the legislation during the enactment process before it became law. It is composed of committee reports, transcripts of hearings, statements of legislators concerning the legislation, and any other material published for legislative use in regard to the legislation.

Legislative history may be of assistance in several ways when interpreting a statute. The history may identify why an ambiguous term was used and what meaning the legislature intended, what the legislature intended the statute to accomplish, the general purpose of the legislation, and so on.

**For Example**

Section A(9) of the Housing Discrimination Act provides that no person shall deny an individual housing on the basis of gender preference. The court is called upon to interpret the term *person*. Does it include corporations and businesses such as partnerships?

In the case before the court, a closely held corporation that owned an apartment complex refused to rent an apartment to a couple because of the gender preference of the corporation employee who managed the complex. The corporation argued that a corporation is not a person within the meaning of the statute. Included in the legislative history of the statute is a committee report recommending the passage of the legislation. The report contains the following: "The intent of the legislation is to eliminate any and all forms of gender discrimination in housing. The term 'person' is intended to include all individuals and business entities, including corporations." The legislative history in this example provides the court guidance in interpreting the statute.

Note that for federal statutes there is usually a great deal of legislative history.

This may be reviewed by consulting the congressional record. Legislative history for state statutes may be very limited or nonexistent, depending on the state. Consult the appropriate state legislative records or service office for the availability of legislative history.

Remember, legislative history is considered only if the plain meaning of a statute is not clear or sections of a statute are internally inconsistent. If the meaning is clear, that meaning will be applied by the court even if the legislative history indicates the legislature intended a different meaning.

**B. Canons of Construction****canons of construction**

The rules and guidelines courts use when interpreting statutes.

**Canons of construction** are rules and guidelines the courts use when interpreting statutes. The Plain Meaning Rule governs when the canons of construction apply. If the meaning of the statute is clear on its face, there is no room for interpretation and a court will not apply the canons of construction.

The canons of construction are too numerous to be addressed individually in this text, but some of the better-known canons are presented here.

1. *Expressio Unius*. The entire Latin phrase is *expressio unius est exclusio alterius*, which translates as "the expression of one excludes all others." If the statute contains a list of what is covered, everything else is excluded.

**For Example** If a statute governing artists lists potters, glassblowers, painters, poets, writers, and sculptors but does not list weavers, weavers are not covered by the statute. Only the occupations listed are covered. All other occupations are not covered.

Note, however, that statutes are often written to state that a list is not exclusive. When so written, this canon of construction does not apply, and the statute is not limited to the items listed.

**For Example** “A ‘Building’ as used in this statute means a structure on private or commercial property and includes *but is not limited to* a dwelling, an office of fixed location, ...”

2. *Ejusdem Generis*. This term means of the same genus or class. As a canon of construction, it means that whenever a statute contains a specific list followed by a general term, the general term is interpreted to be limited to other things of the same class or kind as those in the list.

**For Example** A statute regulating self-propelled vehicles lists “bicycles, tricycles, unicycles, and other devices.” “Other devices” is limited to mean devices of the same class or kind as bicycles, tricycles, and unicycles. Motorized vehicles are not “other devices” within the meaning of the statute.

3. *Pari Materia*. This Latin phrase translates as “on the same subject matter.” As a canon, it means that statutes dealing with the same subject should be interpreted consistently.

**For Example** A state’s Fair Housing Act prohibits discrimination against an individual on the basis of “gender preference.” The state’s Fair Employment Act also uses the term *gender preference*. The term should be interpreted consistently in both statutes unless the statutes have definitions sections that give clearly different meanings.

4. *Last Antecedent Rule*. Qualifying words and phrases apply to the words or phrase immediately preceding and do not extend to other, more remote words or phrases.

**For Example** A DWI statute provides “‘driver’ means every person who drives or is in actual physical control of a motor vehicle upon a highway ...” The phrase “upon a highway” modifies the term “motor vehicle.” It does not modify the term “drives.”

5. *Intended Remedy.* Statutes are to be interpreted in a manner that furthers the intended legislative remedy.
6. *Entire Context.* The words, phrases, and subsections of a statute are to be interpreted in the context of the entire statute.
7. *Constitutionality.* Statutes are assumed to be constitutional and should be construed in a manner that preserves their constitutionality, if possible.
8. *Criminal Statutes.* Criminal statutes are to be narrowly interpreted.

It is important to remember that, as with all matters involving case law, when a court interprets a statute, the principle of stare decisis applies. A court will follow the interpretation previously adopted unless the previous interpretation is overruled and a new interpretation is adopted.

## V. Key Points Checklist: *Working with Statutes*

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- When reviewing a statute, do not limit your focus to a specific section. Remember, a section is one part of an entire act that usually contains several statutory sections. Read a section in the context of the entire act. Be sure you are familiar with all the sections of the act, as there may be another section, such as a definitions section, that affects the interpretation of the statute you are reading.
- When you find a statute that appears to apply, do not stop your research. In many instances, more than one statute or legislative act applies to a specific question or fact situation.
- Read statutes carefully and slowly. Several readings may be necessary. You may have to make a chart or diagram of the various sections and subsections of a statute to gain an understanding of the operation of the statute.
- All the words of a statute have meaning. If a word does not seem necessary or appears repetitive, you may have misread the statute. Read it again. Consult a secondary source that contains a discussion or interpretation of the statute.
- Do not assume a word means what you think it does. Many statutory words are terms of art, loaded with meaning. Check the definitions section of the statute, case law, or a legal dictionary to ensure you give the correct meaning to a term.
- The plain meaning of a statute governs its statutory interpretation. If the meaning is clear, it is not subject to interpretation.
- If the statute is unclear or ambiguous, look to other sources for guidance, such as legislative history or applicable canons of constructions. Are there court opinions that interpret the statute? Are there secondary sources, such as law review articles or encyclopedia sections, that discuss the statute?

## VI. Application

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The application of the principles of statutory analysis is illustrated in the following examples.

### A. Chapter Hypothetical

In the hypothetical situation presented at the beginning of the chapter, Cecil's research turns up five sections of the state's Commercial Code Sales Act that may apply:

- Section 29-2-102 provides that the act applies to the sale of goods only. Services are specifically excluded in the act.
- Section 29-2-105 defines goods as "all things which are movable at the time of the contract for sale."
- Section 29-2-313 provides that an express warranty is created by a seller's affirmation of fact or promise that relates to the quality of the goods.
- Section 29-2-314 states that "a warranty that the goods shall be merchantable is implied in a contract for their sale if the seller is a merchant with respect to goods of that kind."
- Section 29-2-315 provides, "Where the seller at the time of contracting has reason to know any particular purpose of which the goods are required and the buyer is relying on the seller's skill or judgment to select or furnish suitable goods there is a warranty that the goods shall be fit for such purpose."

After conducting research on how to analyze statutory law, Cecil applies the steps recommended in this chapter.

**Step 1 Determine whether the statute applies.** When reviewing the statutes, Cecil notes that section 29-2-102 provides that the Commercial Code Sales Act applies only to the sale of goods. If this transaction is not a sale of goods, the statute does not apply and the warranty provisions of the act do not apply.

Section 29-2-105 defines goods as "all things which are movable ..." This definition is of no help. Is a permanent hair treatment movable within the meaning of the act? In this case, both goods and services are involved. The service portion, the beautician applying the permanent, does not appear to be goods within the meaning of the statute but is clearly a service. The invoice, however, shows that Mrs. Jackson paid twenty dollars for a perm kit. The perm kit is clearly goods under the act. The transaction is a mixed transaction involving both services and goods. Cecil's review of the statute indicates that there is no section that addresses mixed transactions.

Since the statute does not give guidance concerning mixed transactions, Cecil must refer to case law. In the case of *Elie v. American Saloon*, the court provides guidance for determining when a mixed transaction is a sale of goods covered by the Commercial Code Sales Act.

The court adopted what it called the predominant factor test. Under this test, the nature of the contract will be determined by what predominates. If the transaction involves primarily a service, it is a service contract and is not covered by the act. If the transaction involves primarily the sale of goods, it is a sale of goods and is covered by the act. In its discussion of the application of the test, the court stated that the bill or receipt should be examined. If the largest portion of the bill applies to the cost of the goods sold, the transaction is predominately a sale of goods and the act applies. If the majority of the bill applies to the services provided, the transaction is a service transaction, not covered by the act.

Applying this test to Mrs. Jackson's facts, the bill clearly indicates that the largest portion of the transaction applied to the service of giving the permanent. Twenty dollars was charged for the perm kit (goods) and eighty dollars for giving the permanent (services). Cecil concludes that under the predominant factor test, the service





After performing this step, Cecil can reach a conclusion on whether the statute applies and whether Mrs. Jackson would have a cause of action for breach of warranty under section 29-2-314. Assuming that the transaction is a sale of goods, **which is doubtful in light of the conclusion reached in step 1**, it appears that the statute would apply: there would be a contract for the sale of goods by a merchant of those goods.

Under section 29-2-314, the seller warrants that the goods are merchantable, which is defined in case law as meaning “fit for the ordinary purposes for which such goods are used.” In Mrs. Jackson’s case, the goods obviously were not fit for their ordinary purpose. Her hair changed color and broke. If section 29-2-314 applies, Mrs. Jackson clearly has a claim for breach of warranty. Remember, however, the conclusion in step 1 was that section 29-2-314 does not apply because the transaction is probably a sale of a service not goods.

### ***B. Will Revocation Statute***

Section 50-5 of a state statute is the applicable statute in this example. It provides as follows:

No will in writing, nor any part thereof, shall be revoked unless, with the intent to revoke, the testator:

- a. executes a subsequent will or codicil,
- b. prepares a writing declaring an intention to revoke the same which is executed in a manner in which a will is required to be executed, or
- c. the testator or some person in the testator’s presence and by the testator’s direction ... cancels, or destroys the same, with the intent to revoke.

The following facts apply in this example. Before Mary Glenn died, she directed her brother, Tom Glenn, to cancel her will. Because she was too weak to write, she directed her brother to cancel the will by writing across the first page, “I hereby revoke this will. It is my intent that this will be no longer valid. I direct my brother to do this because I can no longer write.” Tom took the will to Mary’s kitchen, a room adjacent to her bedroom, and wrote what Mary had requested on the first page of the will and added, “This was done at the request of Mary Glenn by me, Tom Glenn.”

Was the will validly revoked under the terms of the statute?

**Step 1 Determine whether the statute applies.** The statute appears on its face to apply to this fact situation. The statute governs will revocations and this is an attempted revocation.

**Step 2 Analyze the statute.** After a careful reading, the statute can be analyzed and the required elements identified. The statute provides three ways in which a written will can be revoked:

1. by a subsequent will or codicil executed by the testator, with the intent to revoke
2. by a writing intended to revoke the will, executed in the same manner as a will is required to be executed
3. by the testator or some person in the testator’s presence and by the testator’s direction canceling or destroying the will with the intent to revoke



**Step 3 Apply the statute to the legal problem or issue.** When the statute is applied to the fact situation, it appears that subsections (a) and (b) clearly do not apply. Subsection (a) requires a subsequent will or codicil, neither of which is present in Mary Glenn's case. Subsection (b) requires a writing revoking the will, executed in a manner in which a will must be executed. Assume that research reveals that the state statutes require a will to be witnessed by two witnesses. There were no witnesses in this case. The requirements of this subsection are not met because the writing by Tom was not executed in the required manner.

If there is a valid revocation under the statute, it can only have occurred under the cancellation provisions of subsection (c). For a revocation to occur under subsection (c), the following elements must be met:

1. The testator or some person
  - a. in the presence of the testator, and
  - b. by the testator's direction
2. Cancels or destroys the will
3. With the intent to revoke.

In this example, the required elements of the statute will be applied to the facts of the case in a different way than in the previous example. In the previous example, a chart was used. Here, a narrative summary is used.

1. Testator or some person. The requirements of this element are met. The testator did not cancel the will but "some person," her brother, did.
  - a. In the presence of the testator. It is questionable whether this element is met. Does "in the testator's presence" mean actual physical presence in the same room? If the person canceling the will is in an adjacent room, is that "in the testator's presence?" If the statute does not define the term *presence*, case law must be consulted. If the courts have not interpreted the term, the legislative history of the act may shed some light.
  - b. By the direction of the testator. This element is met. Mary Glenn directed her brother to revoke the will.
2. Cancels or destroys the will. This element appears to be met. The language clearly revokes the will and appears on the will itself. The statute does not require that the revocation language appear on a specific page of the will such as the signature page. Case law should be consulted to see whether the courts have established where the revocation language must be placed.
3. With the intent to revoke. This element is met. The intent to revoke is clearly indicated in the language Mary Glenn chose.

The conclusion is that the statute applies and the will has been revoked if the presence requirement is met and if cancellation language is effective when placed on the first page of a will. By following the three recommended steps, subsections (a) and (b) of the statute were eliminated from consideration, and the subsection that could apply was identified (subsection (c)). The application analysis helps focus the attention on what research is needed to reach a final conclusion. Note that the final conclusion cannot be reached in step 3 until research is conducted to determine what "in the testator's presence" requires under the statute.

## Quick References

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|                        |     |                            |     |
|------------------------|-----|----------------------------|-----|
| canons of construction | 000 | reference information      | 000 |
| chart format           | 000 | scope                      | 000 |
| definitions            | 000 | shall/may/and/or           | 000 |
| legislative history    | 000 | short title                | 000 |
| narrative summary      | 000 | statutory analysis         | 000 |
| number                 | 000 | statutory analysis process | 000 |
| Plain Meaning Rule     | 000 | statutory elements         | 000 |
| purpose clause         | 000 | statutory law              | 000 |

## Summary

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An expanding source of law in the United States is the law passed by legislative bodies. This body of law, commonly called statutory law, assumes a greater role because many matters once covered by case law are now addressed by state and federal legislative bodies. As a result of this growth, paralegals are more frequently engaged in analyzing legal problems and issues governed by statutory law, which means they must have the ability to conduct statutory analysis.

Statutory analysis is the process of determining whether a statute applies, how it applies, and the effect of that application. A prerequisite to analyzing a statute is a familiarity with the parts of a statute. While these may vary in different jurisdictions, it is helpful to have an understanding of the basic framework commonly used.

The most efficient way to address a problem involving a statute is to have an approach to statutory analysis. This chapter presents a three-step approach.

The first step is the determination of whether the statute governs the situation in any way. This step involves locating all the possible statutes that may apply, then deciding which ones apply to the facts raised by the legal problem. If the problem involves the sale of land, for example, statutes governing the sale of goods do not apply.

The second step is to read the statute carefully and identify what is required for the statute to apply. These requirements are usually referred to as the elements of the statute. A careful analysis may require several readings of the statute and reference to interpretative sources, such as court opinions, or secondary sources, such as treatises and law review articles.

The third step is the application of the elements to the facts of the legal problem. This step involves matching the elements of the statute to the facts of the case and determining how the statute applies.

When engaging in statutory analysis, there are considerations and guidelines that should be kept in mind. Most of these come into play when the meaning of a statute is unclear or ambiguous. In addition to court opinions, which give guidance to the interpretation of a statute, legislative history and canons of construction may be consulted. Legislative history is composed of all the legislative material and records concerning a statute before it became law. Canons of construction are guidelines developed by courts for use in interpreting ambiguous statutes. These sources should not be used if the meaning of the statute is clear on its face.

The ease with which you are able to analyze a statute increases with practice. The more you read and analyze statutes, the easier it becomes. The exercises at the end of this chapter may prove helpful in this regard.

## Internet Resources

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<http://www.law.cornell.edu/>

United States Code

<http://www.findlaw.com/>

Type in the name of a state to locate state statutes

<http://www.lawsonline.com>

Links to state and federal law sources

<http://www.access.gpo.gov/>

Find the Code of Federal Regulations at this Government Printing Office (GPO) site

<http://www.house.gov/>

United States House of Representatives home page

<http://www.senate.gov/>

United States Senate home page

<http://www.lcweb.loc.gov/>

Library of Congress

## Exercises

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*Additional assignments are located on the Online Companion and the Student CD-ROM accompanying the text*

### ASSIGNMENT 1

Describe in detail the components of a statute.

### ASSIGNMENT 2

Look up a statute in your state and identify its component parts. You may find a statute on the Web through <http://www.findlaw.com/> or look one up at a local law or public library (most public libraries have the state statutes).

In the following exercises, a statute is presented, followed by questions concerning the statute.

### ASSIGNMENT 3

**Statute:** Criminal code section 20-4-102, Arson.

A person who knowingly sets fire to, burns, causes to be burned, or by use

of any explosive, damages or destroys, or causes to be damaged or destroyed, any property of another without his consent commits arson.

### Questions

- A. What are the required elements of arson?
- B. Tom breaks into a neighbor's barn, sets off twenty sticks of dynamite, and blows up the barn. The barn does not catch fire but it is blown to small bits and completely destroyed.  
Has Tom committed arson? Why?
- C. Lois breaks into a house intending to steal cash and jewelry. She lights a match to locate a safe. She drops the match; it falls in a trashcan and the house catches fire. Has Lois committed arson? Why?
- D. Dai's Diner is losing money and about to go out of business. Dai and Steve own the building where the diner is located. One evening

Dai sets the building on fire in order to collect the insurance on the building. Has Dai committed arson? Why?

#### ASSIGNMENT 4

**Statute:** Section 30-1-6, Nuncupative Wills.

- A. A nuncupative will may be made only by a person in imminent peril of death and shall be valid only if the testator died as a result of the impending peril, and must be:
1. Declared to be his last will by the testator before two disinterested witnesses;
  2. Reduced to writing by or under the direction of one of the witnesses within thirty days after such declaration; and
  3. Submitted for probate within six months after the death of the testator.
- B. The nuncupative will may dispose of personal property only and to an aggregate value not exceeding one thousand dollars.
- C. A nuncupative will does not revoke an existing written will. Such written will is changed only to the extent necessary to give effect to the nuncupative will.

*Note:* A nuncupative is an oral will, a will that is not written.

#### Questions

- A. What type of wills does this statute apply to?
- B. What requirements must be met for a nuncupative will to be valid—that is, what are the elements?
- C. Mr. Lang, on his deathbed, writes his will on a piece of notepaper, signs it, and delivers it to his sister for safekeeping. Does the statute govern the validity of this will?
- D. Larry, on his deathbed, declares that it is his will that all his property should go to his girlfriend, Beth. There are three witnesses present—Beth, Larry's sister Mary, and the nextdoor neighbor, Tom. Tom is in an adjoining room. The door to the adjoining room is open. Tom hears

what Larry is saying. Assume for this example that the will is reduced to writing within thirty days and submitted for probate within six months.

1. Is this a valid will under this statute? What additional information may be necessary?
2. Assume this is a valid will, and Tom had a previous valid written will. What impact does the nuncupative will have on the written will? What is disposed of by the nuncupative will?

#### ASSIGNMENT 5

**Statute:** The following statute is a section of the Commercial Code Sales Act adopted by the state legislature—section 2-201, Statute of Frauds:

A contract for the sale of goods for the price of five hundred dollars or more is not enforceable by way of action or defense unless there is some writing sufficient to indicate that a contract for sale has been made between the parties and signed by the party against whom enforcement is sought or by the party's authorized agent or broker. A writing is not insufficient because it omits or incorrectly states a term agreed upon, but the contract is not enforceable under this paragraph beyond the quantity of goods shown in such writing.

Assume that the act applies to the sales of goods.

Goods are defined in section 2-100 as "those things movable" and do not include real property.

#### Questions

- A. Does the statute apply to the lease of goods?
- B. What are the required elements of the statute? In other words, for a contract for the sale of goods of five hundred dollars or more to be enforceable, what is required?
- C. Mary orally contracts to buy ten car tires at seventy dollars each. The seller prepares a contract and gives

it to Mary. Neither party signs the contract.

1. Who can enforce the contract under the provisions of the statute?
2. Assume the contract is signed by Mary only. Who can enforce the contract?
3. Assume that both parties sign the contract and the written contract incorrectly provides for nine tires at seventy dollars each.

Is the contract enforceable under the statute? If so, to what extent?

4. Assume both parties sign the contract and it reads fifteen tires at seventy dollars each.

Is the contract enforceable under the statute? If so, to what extent?

5. Assume there is no written contract. The seller hands Mary a slip of paper on which he has written “this is to confirm our oral agreement.” He and Mary both sign the paper. Is there an enforceable contract under the provisions of the statute? If so, to what extent?

#### ASSIGNMENT 6

**Statute:** Section 35-1-4, Privileged Communications—Husband and Wife:

In all actions, husband and wife may testify for or against each other, provided that neither may testify as to any communication or admission made by either of them to the other during the marriage, except in actions:

- a. between such husband and wife, and,
- b. where the custody, support, health or welfare of their children or children in either spouse’s custody or control is directly in issue.

#### Questions

- A. Prepare an outline of the statutory elements.
- B. When can a husband or wife testify against each other? When are they prohibited from testifying against each other?
- C. Husband, while driving under the influence of alcohol, ran a stop sign and his vehicle collided with a vehicle driven by Mr. Smith. Husband’s spouse (Wife) and two children were passengers in the car. The day after the wreck, Husband told Wife that he knew he ran the stop sign because he was drunk. Mr. Smith sues Husband for negligence. When answering the following questions, identify any additional information that may be necessary to answer the question.

1. Can Wife be compelled to testify concerning her conversation with Husband? Why or why not?
2. Can Wife voluntarily testify concerning the conversation? Why or why not?
3. If Husband and Wife are legally separated, can Wife voluntarily testify concerning the conversation? Why or why not?
4. Is the conversation admissible if they are divorced at the time of the lawsuit? Why or why not?
5. Husband and Wife have lived together as husband and wife for the past twenty years. They have never been formally married. Can Wife testify against Husband concerning the conversation? Why or why not?
6. Is the conversation admissible in a divorce action between Husband and Wife? Why or why not?



For additional resources, visit our Web site at [www.paralegal.delmar.cengage.com](http://www.paralegal.delmar.cengage.com)



Additional assignments are located on the Student CD-ROM accompanying the text.