LEGAL RESEARCH, ANALYSIS, AND WRITING

Second Edition

WILLIAM H. PUTMAN

DELMAR
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Alan attended one year of paralegal classes before being admitted to law school. After his first year, he obtained a part-time job with a law firm. Initially, Alan’s assignments had been the preparation of deposition digests. He is good at preparing deposition digests but wants to be involved in projects in the early stages of the litigation process. At his request, he was assigned to work exclusively with Ms. Tilton, who is a litigation attorney specializing in corporation and contract law.

His first assignment from Ms. Tilton is to determine if 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 asked for the “special” permanent. Beauty Care made no warranties about the permanent. It did not provide Mrs. Jackson, either orally or in writing, any statements concerning the quality of the permanent. The receipt she received for the permanent listed a $20 charge for the permanent kit and other products, and an $80 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 1 inch from the scalp—not a good result.

Alan, based on his paralegal and first-year law school courses, is aware that Mrs. Jackson has a possible tort negligence claim and other possible causes of action against Beauty Care. His assignment, however, is to determine if there is also a possible breach of warranty claim under the state’s commercial code.

Alan has not worked with statutes since he took a paralegal research course. Several questions occur to him: “How do I find the commercial code statutes? Does the Commercial Code Sales 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 research and analyze enacted law and court rules. 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 upon 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.

Statutory law is a major source of law that a researcher must become familiar with when researching and analyzing the law. 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.

Criminal law was once exclusively established and regulated by the common law; today, most criminal law is governed by statutory law.

Consequently, with the growth of statutory law, more and more legal problems and issues are governed by it. Because an ever-increasing number of legal problems and issues require the interpretation and application of statutory law, researchers are more frequently called upon to engage in statutory analysis. Statutory analysis is the process of determining if 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 researcher 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 research and analysis. It begins with a presentation of the anatomy of a statute, follows with a discussion of the process of statutory research and 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 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. Exhibit 3-2 presents the section of the United States Code Annotated (USCA) concerning ransom money. To the left of sections of the codes (in the margins) are terms that describe the components of the codes. The following text discusses each descriptive term and that portion of the statutes referred to by the term.

Not all of the statutory components included in the discussion following the Indiana Code and the USCA are included in every statute. Some statutes, for example, may not have a definitions section. It is important, however, to discuss the components so you will be familiar with them if you encounter them in other statutes.
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### Exhibit 3-2 18 U.S.C.A. § 1202 and Accompanying Annotations.

<table>
<thead>
<tr>
<th>Ch. 55 KIDNAPPING</th>
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<tr>
<td>§ 1202. Ransom money</td>
</tr>
<tr>
<td>(a) Whoever receives, possesses, or disposes of any money or other property, or any portion thereof, which has at any time been delivered as ransom or reward in connection with a violation of section 1201 of this title, knowing the same to be money or property which has been at any time delivered as such ransom or reward, shall be fined under this title or imprisoned not more than ten years, or both.</td>
</tr>
<tr>
<td>(b) A person who transports, transmits, or transfers in interstate or foreign commerce any proceeds of a kidnapping punishable under State law by imprisonment for more than 1 year, or receives, possesses, conceals, or disposes of any such proceeds after they have crossed a State or United States boundary, knowing the proceeds to have been unlawfully obtained, shall be imprisoned not more than 10 years, fined under this title, or both.</td>
</tr>
<tr>
<td>(c) For purposes of this section, the term “State” has the meaning set forth in section 245(d) of this title.</td>
</tr>
</tbody>
</table>


### HISTORICAL AND STATUTORY NOTES

**Revision Notes and Legislative Reports**

1948 Acts. Based on Title 18, U.S.C., 1940 ed., § 408c-1 (June 22, 1932, c. 271, § 4, as added Jan. 24, 1936, c. 29, 49 Stat. 1099). Words “in the penitentiary” after imprisoned” were omitted in view of section 4082 of this title committing prisoners to the custody of the Attorney General. (See reviser’s note under section I of this title.) Minor changes were made in phraseology.


### Amendments


Pub.L. 103–322, § 330016(1)(L), substituted “under this title” for “not more than $10,000”.

Subsecs. (b), (c). Pub.L. 102–322 § 320601(b)(2), added subsecs. (b) and (c).

### FEDERAL SENTENCING GUIDELINES

See Federal Sentencing Guidelines § 2A4.2, 18 USCA.

### AMERICAN LAW REPORTS

What constitutes violation of 18 USCA 1202, prohibiting receipt, possession, or disposition of ransom money, 31 ALR Fed 916.
Exhibit 3-2  Continued

Library references/research guides

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<td>Case Summary</td>
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</table>

Library references

- American Digest System
  - Kidnapping ⇔ 1.
- Encyclopedias
  - Kidnapping, see C.J.S. §§ 1, 2.
- Texts and Treatises
  - Character evidence not admissible, see Wright & Graham: Evidence § 5231 et seq.

Westlaw Electronic Research

See WESTLAW guide following the Explanation pages of this volume.

Notes of Decisions

- Delivery 1
  - Indictment or information 3
  - Instructions 4
  - Interstate commerce 2

1. Delivery
   Where defendant picked up money which was intended as kidnap ransom but had been left in wrong place and, after learning that it was intended to be ransom money, continued to keep it, defendant was guilty of possession of ransom money, notwithstanding contention that there had been no “delivery,” in purview of this section which defined offense as possession of money, “which has at any time been delivered as ransom.” U. S. v. Ortega, C.A.3 (N.J.) 1975, 517 F.2d 1006.

2. Interstate commerce
   To establish violation of this section prohibiting possession of ransom money there was no requirement that defendant be connected with interstate commerce element of primary kidnapping offense under section 1201 of this title. U. S. v. Ortega, C.A.3 (N.J.) 1975, 517 F.2d 1006.

3. Indictment or information
   Indictment charging in several counts conspiracy to commit offenses under this section and sections 875 and 1202 of this title and charging substantive offense of kidnapping and three separate offenses of transmitting communications in interstate commerce demanding ransom money and charging receiving, possessing and disposing of ransom money charged separate offenses and was not duplicitous. Amsler v. U. S., C.A.9 (Cal.) 1967, 381 F.2d 37.

4. Instructions
   In prosecution for possession of ransom money and making false statements to grand jury, trial court did not err in refusing to charge that defendant could be acquitted if he had relied upon advice of Federal Bureau of Investigation agents in attempting to return money anonymously, where such advice occurred a week after defendant had made his false statements to grand jury and no attempt was ever made to return money in manner suggested. U. S. v. Ortega, C.A.3 (N.J.) 1975, 517 F.2d 1006.

   In prosecution under former section 408c-1 of this title accused could not complain of instruction that receipt of ransom money was criminal offense, where court instructed as to what constituted a conspiracy, and that unless jury found accused became part of conspiracy there should be acquittal, and that if accused entered conspiracy jury should further find that accused accepted ransom money knowing it was such, or aided owners in exchanging it. Laska v. U.S., C.C.A.10 (Okla.) 1936, 82 F.2d 672, certiorari denied 56 S.Ct. 957, 298 U.S. 689, 80 L.Ed. 1407.
A. Numbers

Each statute has numbers assigned for each section of the statute. Every 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 usually 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 a number. The topics are further divided into subtopics and assigned a number, and so on. The number of categories and divisions depends upon 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 and the first page of Exhibit 3-2.) 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 10 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 and Exhibit 3-2). 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 in 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 the example are two short titles: the short title of Article 1 of the Indiana Code, 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.)

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 what is specifically covered and not covered by the statute. These are called scope sections. A researcher should first review this section when analyzing a statute, because a review of this section may lead to a determination at the outset whether the statute applies. (See “Scope” in Exhibit 3-1.)
CHAPTER 3 CONSTITUTIONS, STATUTES, ADMINISTRATIVE LAW, AND COURT RULES

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 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: that which is required, prohibited, or allowed. A substantive section of the Indiana Code addresses the question posed at the beginning of this section, “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 that 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. Annotations/Reference Information

Following each section of a statute, in small print, are references to various sources of information related to the section. This reference information, usually referred to as annotations, includes:

- The history of the section, including dates of amendment. It may also include summaries of the amendments and previous statutory numbers if the section number has changed due to a recodification (see the first page of Exhibit 3-2)
- Official comments on the section (see the first page of Exhibit 3-2)
- Cross-references to other 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. ALR cites, and legal encyclopedia cites that discuss the section (CJS, Am. Jur. 2d, etc.) (see the last page of Exhibit 3-1 and the first page of Exhibit 3-2)

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 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 in locating a case through other means (see the last pages of Exhibit 3-1 and Exhibit 3-2)

Annotations are sources of information and are not part of the statute. They are not the law and do not have legal authority.

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 of interest and read the statute in your jurisdiction that governs the area.

III. STATUTORY RESEARCH—LOCATING STATUTES

Statutory research is the process of finding the statutory law that applies to a problem. The first two parts of this section discuss statutory research sources, that is, where statutory law can be found. The third part presents research strategies or techniques, that is, how to conduct statutory research. Locating uniform laws and model acts is covered in Chapter 5. Note that the United States Constitution is included with the USCA and the United States Code Service (USCS), the main research sources for federal law, and most state constitutions are included with the state statutes. The research techniques and strategies that apply to statutory research also apply to constitutional research.

A. Federal Law

1. Publication

Each law passed by Congress is assigned a public law number. The number reflects the order in which the law was passed and the session of Congress. For example, Public Law 107-35 was the thirty-fifth law passed by the 107th session of Congress. The full text of each law is published separately by the United States Government Printing Office and is referred to as a slip law. Slip laws are available at most law libraries and many public libraries. The United States Code Congressional and Administrative News (USCCAN), published by West Group, presents the complete text of all public laws passed by Congress. It is available by subscription and through Westlaw. In addition, slip laws may be purchased from the United States Government Printing Office (phone: 202-783-3238) or through your congressional representative(s). The Government Printing Office web site is provided in the Internet Resources section of this chapter. Note that each session of Congress lasts one year. Since there is a new Congress every two years with the election of the House of Representatives, there are two sessions for each Congress.

At the end of each session of Congress, the slip laws are placed in chronological order (according to the date the law was passed) and published in volumes titled the United States Statutes at Large. Because the laws are placed in chronological order, it is difficult if not impossible to conduct research using the Statutes at Large. For example,
if you were assigned the task of locating the laws relating to the distribution of drugs, you may have to research every volume of the more than 100 volumes. A further impediment to research is that each volume has a separate index. There is no single index that would inform you which volumes contain laws relating to the distribution of drugs.

In 1925, Congress authorized the preparation of the United States Code (USC). Here the laws contained in the Statutes at Large are organized (codified) by subject into 50 categories called titles, and each title covers a different area of law (see Exhibit 3-3). A citation to a USC statute refers to the title number, the name of the code, the section, and the year. Note that the year is the copyright date and not the year the statute was enacted.

Exhibit 3-3 Titles of United States Code and United States Code Annotated.

<table>
<thead>
<tr>
<th>Titles of United States Code and United States Code Annotated</th>
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<tbody>
<tr>
<td>2. The Congress</td>
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<tr>
<td>3. The President</td>
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<tr>
<td>4. Flag and Seal, Seat of Government, and the States</td>
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<tr>
<td>5. Government Organization and Employees</td>
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<tr>
<td>6. Surety Bonds (See Title 31, Money and Finance)</td>
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<td>7. Agriculture</td>
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<td>8. Aliens and Nationality</td>
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<td>9. Arbitration</td>
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<td>10. Armed Forces</td>
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<td>11. Bankruptcy</td>
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<td>12. Banks and Banking</td>
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<td>13. Census</td>
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<td>14. Coast Guard</td>
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<td>15. Commerce and Trade</td>
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<td>16. Conservation</td>
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<td>17. Copyrights</td>
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<td>22. Foreign Relations and Intercourse</td>
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<td>23. Highways</td>
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<td>24. Hospitals and Asylums</td>
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<td>25. Indians</td>
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<td>26. Internal Revenue Code</td>
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<tr>
<td>27. Intoxicating Liquors</td>
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<tr>
<td>28. Judiciary and Judicial Procedure</td>
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<td>29. Labor</td>
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<td>30. Mineral Land and Mining</td>
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<td>34. Navy (See Title 10, Armed Forces)</td>
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<td>35. Patents</td>
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<td>36. Patriotic Societies and National Observances, Ceremonies, and Organizations</td>
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<tr>
<td>37. Pay and Allowances of the Uniformed Services</td>
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<tr>
<td>38. Veterans’ Benefits</td>
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<td>39. Postal service</td>
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<td>40. Public Buildings, Property, and Works</td>
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<td>41. Public contracts</td>
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<td>42. The Public Health and Welfare</td>
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<td>43. Public Lands</td>
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<td>46. Shipping</td>
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<td>47. Telegraphs, Telephones, and Radiotelegraphs</td>
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<td>48. Territories and Insular Possessions</td>
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<td>49. Transportation</td>
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<td>50. War and National Defense</td>
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</tbody>
</table>
A new edition is published every six years, and cumulative supplements called pocket parts are published for each volume during intervening years. The USC is the official code of the laws of the United States. A publication of a code of laws is considered official code when the government publishes the code itself or arranges for or directs a commercial publisher to publish the code.

A drawback of the USC is that it is unannotated; it merely recites the federal statutes. It does not provide the researcher with the valuable information included in the annotations, such as library references and notes to court decisions that have interpreted the statutes.

The two privately published annotated codes are the USCA published by West Group, also available on Westlaw, and the USCS published by LexisNexis, a division of Reed Elsevier, Inc. (referred to in the remainder of this text as LexisNexis). These codes are considered unofficial codes; that is, they are not published at the direction of the government. A discussion of these annotated codes follows.

2. United States Code Annotated

The USCA consists of approximately 200 volumes and includes the General Index. In the front of each volume is a list of the 50 titles of the USC (see Exhibit 3-3). Each volume has a table of contents listing the chapters and features in the volume and a cite page that lists the citation to use for the volume. The first volumes contain the United States Constitution with annotations. The subsequent volumes include the entire text of the 50 titles of the USC arranged according to the 50 titles of the U.S.C. Most titles include a title index as well as appendix material, and each volume is periodically supplemented with pocket parts that update the main text. The appendix material may include sections of the Code of Federal Regulations previous code text, and other materials such as international conventions. (See Exhibit 3-2 for an example of a USCA section.)

a. General Index

The General Index is a softbound, multivolume set that is updated annually. It consists of descriptive words or phrases, arranged alphabetically, with headings and subheadings. Following each topic is the title and section number(s) of the relevant statutory provision. When the reference to a section number is followed by the abbreviation et seq., it means that the reference is to a group of sections beginning with that section. (See Exhibit 3-4 for an example of an index page.)

b. Pocket Parts and Supplementary Pamphlets

The hardcover volumes of the USCA are updated with pocket parts that are placed in a pocket at the back of each volume. The pocket parts will include any revisions to a statute and additional annotations, such as recent cases interpreting the statute. If a statutory section is not included in the pocket part, the section has not been amended and there are no new annotations. The pocket parts are cumulative—they update the volume from the date of the volume’s publication. For example, if the hardbound volume was published in 2004, then the 2009 pocket part will include all the changes, updates, and new cases construing the statutes contained in the volume during 2005, 2006, 2007, and 2008.

If the pocket part is too large to fit in the back of a volume, the publisher will provide a soft-bound supplement that sits next to the volume. Occasionally, a new hardbound volume will be printed that will include the information contained in the pocket part or supplement. When this occurs, the publisher will place in the pocket the notice: “This
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§511. Liability of States, instrumentalities of States, and State official for infringement of copyright
(a) In General.—Any State, any instrumentality of a State, and any officer for employee of a States or instrumentality of a State acting in his or her official capacity, shall not be immune, under the Eleventh Amendment of the Constitution of the United States or under any other doctrine of sovereign immunity, from suit in Federal court by any person, including any governmental or nongovernmental entity, for a violation of any of the exclusive right of a copyright owner provided by section 106 through 121, for importing copies of phonorecords in violation of section 602, or for any other violation under this title.

[See main volume for text of (b)]

(As amended Pub L. 106-14, § 1(g)(6), Aug. 5, 1999, 113 Stat. 222.)

HISTORICAL AND STATUARY NOTES

Amendments

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Text and Treatises
Business and Commercial Litigation

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Waiver 3

1/2. Constitutionality
Statute purporting to abrogate states’ sovereign immunity in copyright infringement suits was not enacted pursuant to a valid exercise of congressional power to enforce the guarantees of the Fourteenth Amendment’s due process clause and thus did not validly waive states’ immunity. Rodriguez v. Texas Com’n on the Arts, C.A.5 (Tex.) 2000, 199 F.3d 279, 53 U.S.P.Q.2d 1383.

2. Immunity

University employee who allegedly authorized printing of copies of author’s book in violation of Copyright Act was entitled to qualified immunity, where contractual provision relating to duration of university’s publishing license was ambiguous and was susceptible of interpretation that permitted employee’s actions. Chavez v. Arte Publico Press, C A.5 (Tex.) 1995, 59 F.3d 539, 35 U.S.P.Q.2d 1609, vacated 116 S.Ct. 1667, 517 U.S. 1184, 134 L.Ed.3d 772, on remand 139 F.3d 282, certiorari denied 116 S.Ct. 1672, 517, U.S. 1187, 134 L.Ed.2d 776.

3. Waiver
University waived its Eleventh Amendment immunity from suit for copyright infringement . . .

Volume Contains No Pocket Part.” If there is no pocket part or a notice that the volume does not contain a pocket part, assume it is missing and check with the librarian. (See Exhibit 3-5 for an example of a portion of a pocket part.)

Pocket parts are published only once a year. To ensure that the information contained in the USCA is current, supplemental pamphlets, titled Statutory Supplements,
are published every three to four months following the publication of the pocket part. Like pocket parts, they include any revisions to a statute and additional annotations. These pamphlets are not cumulative; each one covers a specific time period. This means that you must check each supplement when updating research. (See Exhibit 3-6 for an example of a portion of a Statutory Supplement page.) These supplemental pamphlets are usually located at the end of the USCA set. You must always check the pocket parts and supplemental pamphlets to ensure that your research is current and that there have not been changes in the law subsequent to the publication of the main volume.

c. Popular Name Table
Statutes are often referred to by a popular name, such as the Americans with Disabilities Act or the Freedom of Information Act. If you know a statute’s popular name but do not know the citation, a quick way to locate the statute is through the popular name table. The table can be found in the last volume of the General Index. The table provides you with the public law number, the Statutes at Large citation, and the title and section numbers. (See Exhibit 3-7 for a page from the table.)

d. Conversion Tables
If you know the Statutes at Large citation, the public law number, or the year and chapter of a law, then the conversion tables allow you to find where the law is classified in the USCA. The conversion tables are located in the Tables volumes. They are published annually, and updates are located at the end of each noncumulative supplement. (See Exhibit 3-8 for an example of a conversion table page.)


<table>
<thead>
<tr>
<th>§ 754b</th>
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<tr>
<td>16</td>
<td>WESTLAW ELECTRONIC RESEARCH</td>
</tr>
<tr>
<td>United States cases: 398k[add key number].</td>
<td></td>
</tr>
<tr>
<td>§ 757c. Work under reimbursable agreements; recording obligations and crediting amounts received</td>
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</tbody>
</table>

**LIBRARY REFERENCES**

American Digest System
United States ↔ 82(1)

Encyclopedias
United States, see C.J.S. § 122

**WESTLAW ELECTRONIC RESEARCH**

United States cases: 393k[add key number].

**CHAPTER 12—FEDERAL REGULATION AND DEVELOPMENT OF POWER**

SUBCHAPTER I—REGULATION OF THE DEVELOPMENT OF WATER POWER AND RESOURCES

§ 803. Conditions of license generally

**NOTES OF DECISIONS**

32. Fish and wildlife protection—Generally

Under Federal Power Act section providing for inclusion of recommendations from federal and state fish and wildlife agencies in hydroelectric power licenses, Federal Energy Regulatory Commission (FERC) has discretion to reclassify, reject or modify such recommendations, including power to determine that recommendation does not qualify for treatment under that section, although FERC must afford significant deference to recommendations made for protection, mitigation, and enhancement of fish and wildlife. American Rivers v. F.E.R.C., C.A.9 1999, 187 F.3d 1007.
Exhibit 3-7 U.S.C.A. Popular Name Table Page.

<table>
<thead>
<tr>
<th>POPULAR NAME TABLE</th>
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<tbody>
<tr>
<td>Freedom of Information Act (FOIA)</td>
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<tr>
<td>Pub.L. 89-487, July 4, 1966, 80 Stat. 250 (See 5 § 552)</td>
</tr>
<tr>
<td>Pub.L. 90-23, § 1, June 5, 1967, 81 Stat. 54 (5 § 552)</td>
</tr>
<tr>
<td>Pub.L. 93-502, §§ 1 to 3, Nov. 21, 1974, 88 Stat. 1561 (5 § 552)</td>
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| Freedom of Information Reform Act of 1986 |

| FREEDOM Support Act |
| See Freedom for Russia and Emerging Eurasian Democracies and Open Markets Support Act of 1992 |

| Freedom to E-File Act |
| Pub.L. 106-222, June 20, 2000, 114 Stat. 353 (7 §§ 6901 note, 7031 to 7035) |

| Freedom to Farm Law |
| See Emergency Farm Financial Relief Act |

| French Spoliation Claims Act |
| Jan. 20, 1885, ch. 25, 23 Stat 283 |

| Fresh Cut Flowers and Fresh Cut Greens Promotion and Information Act of 1993 |

| FRIENDSHIP Act |
| See Act For Reform In Emerging New Democracies and Support And Help for Improved Partnership with Russia, Ukraine, And Other New Independent States |

| FRLA |
| See Federal Regulation of Lobbying Act |

| FRRAPA |
| See Forest and Rangeland Renewable Resources Planning Act of 1974 |

| FRRRRA |
| See Forest and Rangeland Renewable Resource Research Act of 1978 |

| FRSA |
| See Federal Railroad Safety Act of 1970 |

| Frye Acts |
| See Shipping Acts |

| FSC Repeal and Extraterritorial Income Exclusion Act of 200 (Foreign Sales Corporation Repeal and Extraterritorial Income Exclusion Act of 2000) |
| Pub l. 106-519, Nov. 15, 2000. 114 Stat, 2423 (see Tables for classification) |

| FSIA |
| See Foreign Sovereign Immunities Act of 1976 |

| FSLMRA |
| See Federal Service Labour-Management Relations Act |

| FSPA |
| See Uniformed Services Former Spouses Protection Act |

| FTCA |
| See Federal Tort Claims Act |

| FTCMPA |
| See Federal Timber Contact Payment Modification Act |

| Fuel Distribution Act |
| Sept. 22, 1922, ch. 413, 42 Stat. 1025 |

| Fugitive Felon Act |
| June 22, 1932, ch. 271, § 1, 47 Stat. 326 |
| May 18, 1934, ch. 301, 48 Stat. 301 (See 18 § 1073) |

| Fugitive Slave Laws |
| Sept. 18, 1850, ch. 60, 9 Stat. 462 |
| June 28, 1864, ch. 166, 13 Stat. 200 |
### Exhibit 3-8 U.S.C.A. Excerpt from Conversion Table.

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<td>§ 1</td>
<td>114 Stat 2726</td>
<td>42 § 13701</td>
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<td>114 Stat 2728</td>
<td>42 § 14135a</td>
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<td>114 Stat 2731</td>
<td>10 § 1565</td>
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<td>§ 5(a)(2)</td>
<td>114 Stat 2732</td>
<td>10prec. 1561</td>
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<td></td>
<td>§ 5(b)</td>
<td>114 Stat 2733</td>
<td>10 § 1565 nt</td>
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<td>28 § 531 nt</td>
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<td>§ 12</td>
<td>114 Stat 2751</td>
<td>36prec. 101 nt</td>
</tr>
</tbody>
</table>

Dec. 20, 2000 106-331...
3. United States Code Service

LexisNexis publishes the USCS. It consists of approximately 150 volumes and contains the wording of the federal statutes published in the Statutes at Large. The USCS and USCA are competitive sets, published by different publishers to accomplish the same basic task—to publish the federal laws and provide the information necessary for researchers to interpret and answer questions concerning federal law. Sample pages from the USCS are presented in Exhibit 3-9.

The sets are similar in most respects; therefore, most researchers do not use both sets. Which set you use is often based on availability or personal preference. The similarities and differences between the sets are presented here.

Similarities between the two sets are:

1. They are organized in the same way. The organization is based on the 50 titles of the USC. For example, Title 42 Section 1983 will be found at 42 U.S.C.A. § 1983 and 42 U.S.C.S. § 1983.
2. They have general indexes, popular name tables, and conversion tables.
3. They are annotated. In both sets, the annotations provide information on the history of the statute, direct you to other research sources, and briefly summarize cases that have construed the statute.
4. They are similarly updated. Both sets are updated annually with pocket parts for each volume and supplemental pamphlets.

Differences between the two sets are:

1. The USCA includes more court decisions in the Notes of Decisions section of the annotations. The USCS tends to be more selective and reference the more significant cases.
2. The Research Guide section of USCS annotations is more comprehensive than the Library Reference section of the USCA in that it includes more references to research sources.
3. The supplements to the USCS, called the Cumulative Later Case and Statutory Service, are cumulative. Therefore, only the latest supplement needs to be checked. The USCS also publishes a monthly pamphlet called U.S.C.S. Advance, which includes new public laws, presidential proclamations, and executive orders.
4. In the USCA, the topics covered in the Notes to the Decisions are arranged alphabetically; in the USCS, the Interpretive Notes and Decisions are arranged according to topic (see Exhibit 3-2 and Exhibit 3-9).

B. State Statutory Law and Codes

The enactment and publication of state legislation varies in detail from state to state, but they are similar in many respects to the federal system. Most states initially publish their laws in pamphlets similar to the federal slip laws. When the legislative session is over, the laws are published in books often referred to as session laws. These are similar to the Statutes at Large in that the laws are presented in the order in which they were passed.

State laws are then organized according to topic (codified) and published with annotations similar to the USCA and USCS. Most state codes are similar to the USCA and USCS in the following ways:

- Each set has a general index, and some sets have a separate index following each title.
Exhibit 3-9 Title 18 U.S.C.S 1202.

18 USCS § 1201, N 64

64. Appellate review
In prosecution under predecessor to 18 USCS § 1201, objection that letter which co-defendant had taken from kidnapped victim and which was later found by police in defendant’s apartment was obtained by illegal search could not be raised for first time on appeal from conviction. Eaker v United States (1935, CA.10 Colo) 76 F2d 267.

Defendant who had been convicted of interstate transportation of person who had been unlawfully kidnapped could not by writ of habeas corpus applied for in United States District Court for Western District of Oklahoma affect his sentence for such unlawful interstate transportation rendered in United States District Court for Northern District of Texas, nor cause his trial for kidnapping offense in Western District of Oklahoma, wherein no charge for such offense was pending against him. Trafford v Yellow Cab Co. (1961, CA3 Pa) 293 F2d 43.

65. Habeas corpus proceedings
Whether defendant was member of conspiracy and did conspire in violation of law raised issue of fact, and where that issue was resolved against him in trial court, it could not be relitigated in habeas corpus proceeding. Hudspeth v McDonald (1941, CA10 Kan) 120 F2d 962, cert den (1941) 314 US 617, 86 L Ed 496, 62 S Ct 110, reh den (1945) 325 US 892, 89 L Ed 2004, 65 S Ct 1181.

Motion to vacate sentence for kidnapping conviction of 30 years will be denied when petitioner was adequately made aware of charge against him and where his plea of guilty was voluntarily entered into without fear of death penalty. Wilson v United States (1969, WD Va) 303 F Supp 1139.

§ 1202. Ransom money
Whoever receive, possesses, or disposes of any money or other property, or any portion thereof, which has at any time been delivered as ransom or reward in connection with a violation of section 1201 of this title, knowing the same to be money or property which has been at any time delivered as such ransom or reward, shall be fined not more than $10,000 or imprisoned not more than ten years, or both.

(History; Ancillary Laws and Directives)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Prior law and revision:

This section is based on Act June 22, 1932, ch 271, § 4, as added Jan. 24, 1936, ch 29, 49 Stat. 1099 (former 18 U.S.C. § 408c-1).
The words “in the penitentiary” after “imprisoned” were omitted in view of 18 USCS § 4082 committing prisoners to the custody of the Attorney General.
Minor charges in phraseology were made.

CROSS REFERENCES

Sentencing guidelines, Statutory Index, Sentencing Guidelines for U.S. Courts, 18 USCS Appendix.

RESEARCH GUIDE

Annotations:
What constitutes violation of 18 USCS 1202, Prohibiting receipt, possession, or disposition of ransom money. 31 ALR Fed 916.

INTERPRETIVE NOTES AND DECISIONS

1. Generally
2. Relationship with other laws
3. Delivery of ransom
4. Conspiracy
5. Jurisdiction
6. Indictment
Some statutes have popular name tables and conversion tables that allow you to locate statutes that have been renumbered or repealed.

The statutes are organized by subject with each subject title being subdivided into chapters and so on. (See Exhibit 3-1 and section II.A in this chapter.)

The state constitution with annotations is included in the code.

State codes are usually updated annually by some form of supplement. These may be pocket parts inserted in the statutory volume or separate pamphlets.

State statutes are annotated. The annotations include the history of the section, cross-references to other statutes, research guides, and notes to court decisions (see Exhibit 3-1).

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**Exhibit 3-9 Continued**

<table>
<thead>
<tr>
<th>CRIMES</th>
<th>18 USCS § 1203</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Generally</td>
<td>18 USCS § 1202 was intended to extend federal jurisdiction to persons having only indirect connection with actual kidnapping and to discourage any co-operation with those primarily responsible. United States v Ortega (1975, CA3 NJ) 517 F2d 1006, 31 ALR Fed 909.</td>
</tr>
<tr>
<td>2. Relationship with other laws</td>
<td>18 USCS § 1202 is not separate, detached violation with regard to primary federal kidnapping statute (18 USCS § 1201) and § 1202 is directed to only portion of larger offense which includes number of components. United States v Ortega (1975, CA3 NJ) 517 F2d 1006, 31 ALR Fed 909.</td>
</tr>
<tr>
<td></td>
<td>Establishing violation of 18 USCS § 1202 requires proof of money or property which was delivered as ransom or reward, elements that are clearly not identical to any of elements of USCS § 1201 kidnapping offense, and therefore trial court was correct in refusing to instruct that § 1201. Burns v United States (1977, CA8 Mo) 562 F2d 542, 2 Fed Rules Evid Serv 462, cert den (1977) 434 US 959, 54 L Ed 2d 319, 98 S Ct 490.</td>
</tr>
<tr>
<td></td>
<td>3. Delivery of ransom</td>
</tr>
<tr>
<td></td>
<td>For ransom to have been “delivered” within meaning of § 1202 does not require transfer of possession to kidnappers; all that is needed is for transferor to have placed ransom at place specified by kidnappers, and fact that transferor may have mistak-</td>
</tr>
</tbody>
</table>
C. The Research Process—Techniques and Strategies

1. Locate the Statute

Inasmuch as federal and state codifications share similar features, the process for locating and researching federal and state constitutional and statutory law is essentially the same and will be discussed together here.

The beginning step of all research, including statutory research, is to identify what you are looking for as precisely and narrowly as possible. Define your research question in as concise terms as possible. Time spent narrowing the focus of your search will save a great deal of research time later. A tightly focused identification of the research question saves time because the researcher is immediately directed to the specific area of the law in question and does not waste time searching multiple statutes.

For Example

The question involves the issue of whether a shareholder of a corporation must attend a meeting in person to vote on an issue. If a researcher thinks, “Oh, this is a corporation question” and immediately looks at corporations in the index to the statutes, the researcher will waste time looking through the entire corporation section. If the research is conducted electronically and the search term is simply corporations, all the corporation statutes will come up. If, however, the research is focused to corporations, shareholders, meetings or corporations, shareholders, and voting, the search is narrowed at the outset and the statute is located more quickly whether the research is manual or electronic.

Consult Chapter 10 for guidance on how to narrow the focus of your search by narrowly identifying the issue. See Chapter 2, section III.A, for help in identifying search terms.

After you have defined your search as concisely as possible, you have three main ways to approach locating a statute, as discussed here.

a. General Index

The most common approach to locating statutes is to use the General Index. When using this approach, identify as specifically as possible the words that describe the problem. If the term you use is not the term used in the index, then the index often will refer you to the correct term. For example, if you are looking for statutes concerning trailers, the index under trailers may read, “See Manufactured Homes.” (See Exhibit 3-4 for an example of an index page.)

After you have found the correct index entry, the index will list the appropriate title and section. With that information, you can locate statutes in the appropriate statutory volume. Most statutes are arranged by title and the titles covered in each volume are indicated on the spine. For example, the spine may read “Titles 5–7” thus indicating that Titles 5 through 7 of the code are included in that volume. Be sure to check the index pocket part if you cannot find a term in the main index volume. It may be that the term has been recently added to the index.

b. Title Table of Contents

Most statutory codifications include a table of contents at the beginning of each title that lists the name and number of the chapters within the title. At the beginning of each chapter, a table of contents typically lists the statutory section number and name of each section. If you know the number of the title you are looking for, you can go directly to the volume and scan the table to quickly locate a statute. It is not necessary to consult the General Index.
You want to locate the statutory definition of a term in the Indiana Commercial Code and you know from experience that the commercial code is Title 26. You can go directly to Title 26 and scan the table of contents to Chapter 1 and immediately locate the appropriate section, “26-1-1-201 General Definitions.” (See the first page of Exhibit 3-1.)

Beginning researchers should be aware that some subjects are covered by more than one set of laws. Therefore, referring to a specific title requires that the researcher be sufficiently familiar with the law to know that the search topic is covered only by that title.

The question being researched involves identifying the statutes that govern a loan. Several statutes may cover loans: the commercial paper chapter of the commercial law title of the code, the state’s small loan act, and the federal truth-in-lending statutes.

Always consult the General Index and identify all the possible titles that cover the research topic.

c. Popular Name
Many laws are commonly known by their popular name, such as the Good Samaritan Act or the Truth in Lending Act. Many state statutes and the USCA and USCS have popular name tables listing in alphabetical order the popular names and citation. The tables are usually located with the table of contents volume(s) or as a separate volume. Shepard’s Acts and Cases by Popular Name: Federal and State also lists the popular names and citations of federal and state laws. If you know the popular name of the act you are looking for, consult the popular name table, and you will be directed to the appropriate section of the statutes.

2. Update Your Research
After you locate a statute, check the pocket parts and supplementary pamphlets to ensure that the statute published in the main volume has not been amended or repealed. Check also the annotations to locate new case law that may affect the interpretation of the statute. The Shepard’s Citations provides updates to state and federal statutes and is published more frequently than state and federal pocket parts and supplementary pamphlets. The process of updating research through the use of Shepard’s Citations is called “Shepardizing.” Shepard’s is discussed in Chapter 5.

D. Computer-Aided Research
You may research state and federal statutes by using Westlaw and LexisNexis. In addition, you may access most federal and state laws without a fee through various sites on the internet. You may locate many through state and federal government web sites, college and university web sites, and http://www.findlaw.com. Some of these sites are located in the Internet Resources section of this chapter. Also, many annotated statutes are available on CD-ROM through the publisher. Statutory research using Westlaw, LexisNexis, and others is discussed in Chapter 7.

E. Ethics—Competence and Diligence
There are considerations of ethics to keep in mind when conducting any type of research, whether it be enacted law, case law, or secondary authority. Rule 1.1 of the American Bar Association’s Model Rules of Professional Conduct requires that a client be provided
competent representation. Rule 1.3 provides that a client be represented with diligence and promptness. These rules mean that a researcher must possess sufficient knowledge of the law and legal research to research completely the issues raised by the facts of the client’s case. They also mean that all avenues of research must be pursued promptly and explored thoroughly.

IV. ADMINISTRATIVE LAW

As discussed in Chapter 1, federal and state legislatures delegate the task of administering laws to administrative agencies. The legislatures pass enabling legislation that authorizes administrative agencies to carry out the intent of the legislature. This enabling legislation usually includes a grant of authority to create rules and regulations necessary to carry out the law. These rules and regulations have the authority of law; they are primary authority. The body of law that results from the rules and regulations and the court opinions interpreting them is called administrative law. The terms rules and regulations are often used interchangeably when discussing administrative law. To avoid repetition, the term regulation, when used in this section, includes both administrative rules and regulations.

On occasion you may be called upon to research issues involving the interpretation or application of an administrative agency regulation.

For Example The client’s business is fined by the Occupational Safety and Health Administration (OSHA) for failure to have fire extinguishers located in the proper places in the business. The client challenges OSHA’s interpretation of the agency’s regulation governing fire extinguishers. Research would be necessary to locate the regulation and the court opinions that have addressed the regulation.

A. Federal Administrative Law

This section discusses research involving the location and interpretation of administrative regulations.

1. Publication

Administrative regulations are published in two sources, the Federal Register and the Code of Federal Regulations.

a. Federal Register

The Federal Register is a daily publication of the federal government that publishes:

- Presidential documents such as executive orders
- Rules and regulations
- Proposed rules and regulations, including summaries of proposed rules and notices of hearings, persons to contact, and so on (see Exhibit 3-10)

The Federal Register includes a table of contents in the front of each issue arranged by agency. At the end of each issue is a section called “Reader Aids” that includes valuable information such as a list of telephone numbers to obtain information, and a table of “CFR Parts Affected” that lists parts and sections of the Code of Federal Regulations affected. The pagination of the Federal Register is continuous, beginning with the first issue of a year and ending with the last. Therefore, the first page of the first issue of the year will be page 1 and the last issue of the year will end with a page number somewhere around 90,000. The issues are not cumulative; thus, using the Federal Register as a research source is difficult.
Exhibit 3-10 Federal Register Cover Page.

6–28–01
Vol. 66      No. 125
Pages 34353–34522

Thursday
June 28, 2001
In addition, a cumulative Federal Register Index is published at the end of each month. This index is arranged by agency and it references all the information published in the previous months of the year.

**b. Code of Federal Regulations**

It is much easier to conduct regulatory research using the *Code of Federal Regulations* (CFR). The regulations of administrative agencies are codified in this multivolume, softbound set of books. The regulations are published in 50 titles, each of which represents a different subject area. The title numbers often but not always correspond to the titles assigned in the *United States Code*. The titles are subdivided into chapters, and each chapter usually covers the regulations of an individual agency. The chapters are divided into parts that consist of regulations governing a specific topic. The parts are divided into sections that are the specific regulations (see Exhibit 3-11). The code is reprinted annually on a quarterly basis; that is, one-fourth of the code is reprinted each quarter.

There is a table of contents for each title, chapter, and part. At the end of each title is an index. In addition there is an index volume (*CFR Index and Finding Aids*) through which regulations may be located by subject matter or agency (see Exhibit 3-12). The index includes a parallel table that allows you to locate the CFR title if you know the citation of the USC statute that established the agency. The index also includes a list of the agencies and 50 titles, chapters, and parts.

**2. Researching Federal Administrative Law**

Due to its organization, it is easier to locate federal rules and regulations through the *Code of Federal Regulations* than the Federal Register; therefore, the following guides focus on researching the CFR.

**a. Indexes and Table of Contents**

You may locate regulations in the CFR by subject matter or agency by consulting the *CFR Index and Finding Aids* volume. If you know the USC statute number, you may locate the code title in the parallel table in the index volume. If you already know the code title or section, you may go directly to the code volume and scan the table of contents for the title to locate the appropriate section. You may also consult the index following the title.

You may also locate regulations through the *Index to the Code of Federal Regulations*. This commercial publication by the Congressional Information Service indexes the CFR by subject and geographic information. It is usually available at a law library.

**b. Other Sources for Locating Rules and Regulations**

You may be directed to specific CFR sections by other publications. If you know the statute that established the administrative agency, the annotations following the statute in the USCA or USCS may include cross-references to specific CFR sections. Other secondary sources, such as law review articles and ALR annotations, may reference specific CFR sections.

**c. Federal Register**

Inasmuch as the CFR is updated annually, it may be necessary to refer to the Federal Register to locate recently published rules and regulations. Consult the latest *Federal Register Index* to locate the rules and regulations.
§1000.1 The Commission.

(a) The Consumer Product Safety Commission is an independent regulatory agency which was formed on May 14, 1973, under the provisions of the Consumer Product Safety Act (Pub. L. 92-573, 86 Stat. 1207, as amended (15 U.S.C. 2051, et seq.)). The purposes of the Commission under the CPSA are:

1. To protect the public against unreasonable risks of injury associated with consumer products;
2. To assist consumers in evaluating the comparative safety of consumer products;
3. To develop uniform safety standards for consumer products and to minimize conflicting State and local regulations; and
4. To promote research and investigation into the causes and prevention of product-related deaths, illnesses, and injuries.

(b) The Commission is composed of five members appointed by the President, by and with the advice and consent of the Senate, for terms of seven years.

§1000.2 Laws administered.

The Commission administers five acts:


§1000.3 Hotline.

(a) The Commission operates a toll-free telephone Hotline by which the public can communicate with the Commission. The number for use in all 50 states is 1-800-638-CPSC (1-800-638-2772).

(b) The Commission also operates a toll-free Hotline by which hearing or speech-impaired persons can communicate by teletypewriter with the Commission. The teletypewriter number for use in all states is 1-800-638-8270.

(c) The Commission also makes information available to the public product recall information, its public calendar, and other information through its
### Exhibit 3-12 C.F.R. Index and Finding Aids Page.

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</table>

Income taxes
**d. Computer-Aided Research**
The CFR and the Federal Register are available on Westlaw and LexisNexis. Federal administrative rules and regulations also may be researched through the Government Printing Office’s access site (see Internet Resources section at the end of this chapter). You also may obtain information from individual agency web sites.

**e. Court and Administrative Decisions**
Your research may require you to consult administrative agency or court decisions for an interpretation of a rule or regulation. Agency decisions may be available through the Government Printing Office and commercial publishers such as Commerce Clearing House (CCH) and the Bureau of National Affairs (BNA). Administrative and court decisions can also be accessed through Westlaw and LexisNexis.

Shepard’s United States Administrative Citations and Shepard’s Code of Federal Regulations Citations include citations to administrative agency and court decisions. West’s Federal Practice Digest will direct you to federal cases and secondary sources that have interpreted federal regulations.

**f. Updating Administrative Law Research**
The Code of Federal Regulations is updated by consulting the List of CFR Sections Affected (LSA). This softcover, monthly publication lists changes to any CFR regulation. It is cumulative; therefore, you must only check the most recent issue. The cover indicates the time period addressed in the pamphlet (see Exhibit 3-13). The LSA is organized by title and part, indicates the nature of the change, such as “revised” or “removed,” and includes a reference to the page number in the Federal Register where the revised section is published.

To locate changes that have occurred since the last LSA publication, check the “Reader Aids” at the end of the most recent Federal Register. The “Reader Aids” includes a table of “CFR Parts Affected” that lists parts and sections of the Code of Federal Regulations affected. The CFR can be updated to the current date through reference to the LSA and “Reader Aids.”

The CFR can also be updated through Westlaw and LexisNexis. If you are updating through the Government Printing Office access web site, then consult both the LSA and the “Reader Aids.”

Administrative agency and court decisions can be updated through Shepard’s United States Administrative Citations and Shepard’s Code of Federal Regulations Citations.

**B. State Administrative Law**
The publication of state rules and regulations varies from state to state, and it would require a separate text to cover each state. The publication and research of state administrative law, however, often follows in varying degrees that of federal administrative law. Therefore, an understanding of the federal administrative law discussed in the previous two subsections will help you when researching state administrative law. Some states publish agency rules and regulations in a single code like the CFR. In some states the regulations are published by the separate agency. Probably the quickest way to locate where an agency’s regulations and administrative decisions are published is to contact the individual agency. Often individual agencies have web sites, and the information may be available through the agency or state government web site.

**V. COURT RULES**
Court rules regulate the conduct of matters brought before the court. They range in the subjects they cover from the technical, such as the format of pleadings, to the substantive, such as grounds for dismissal or when an appeal must be filed. Usually the rules are
divided into two categories: rules of civil procedure and rules of criminal procedure. Each jurisdiction has the authority to promulgate its own set of rules, although many states follow in substantial part the Federal Rules of Civil and Criminal Procedure.

On occasion you may need to research matters involving the rules to determine what a rule requires or how a rule has been interpreted.

For Example  Rule 60B of the Federal Rules of Civil and Criminal Procedure provides that a judgment may be set aside on the grounds of “excusable neglect.” It may be necessary to research the case law to determine how the courts have defined “excusable neglect.”
The Federal Rules of Civil and Criminal Procedure are included in the *United States Code*. By consulting the USCA or USCS, you will find annotations that direct you to summaries of cases and secondary sources, such as legal encyclopedia sections and *ALR* annotations, that have interpreted the rules. Like the federal rules, state court rules are usually published with the state statutes. Locating the rules in the annotated statutes is usually the starting point when researching rules.

The state and federal rules are available on Westlaw and LexisNexis, through http://www.findlaw.com and the state or individual court web site. In addition, multivolume treatises provide exhaustive analysis of the federal rules, such as West’s *Federal Practice and Procedure*.

In addition to the rules governing civil and criminal procedure, federal courts and many state courts have so-called **local rules**. You should consult these rules before filing any pleading or other document with the court. These rules are specific to the court and generally govern administrative matters such as the size of papers accepted, the number of copies of pleadings that must be filed with the original, and how to file by facsimile transmission. If the court has a web site, then the local rules may be available there. If not, local rules are available through the clerk of the court.

**VI. ANALYSIS—THE PROCESS**

The analysis of enacted law and court rules is the process of determining if 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 governed by constitutional, statutory, or administrative law provision, or a court rule, it is helpful to have an approach—an **analysis process**. This process should allow you to approach the matter in a way that efficiently solves the problem in the least amount of time with the least confusion and greatest accuracy. For the sake of clarity, throughout this section the discussion and examples focus upon laws passed by legislative bodies, or 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 3-14 be followed when addressing a legal problem or issue governed by statutory law. 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 the following sections.

**Exhibit 3-14 Statutory Analysis Three-Step Approach.**

| STEP 1 | Determine if 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 |
A. Step 1: Determine If 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:

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

1. Locate All Possible Applicable Statutes

Before you can determine if 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 you have explored all areas of law that may govern the problem and have located all potential applicable statutes. 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. 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 or question raised by the facts of my client’s case?” You can usually answer this question by referring to the scope 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 applies to the sale of goods, it 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 this statute does not cover such transactions. 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 that 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 if a statute governs a situation.
For Example  The client’s case involves the lease of goods, and neither the scope nor definitions sections 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 you may often locate the relevant case law by looking to the reference information following the section of the statute. It may be that two laws apply and 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 if 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 it 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:

1. Read the statute.
2. Identify the statutory elements: What does the statute specifically declare, require, or prohibit?

1. Read the Statute

Keep the following points 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 definitions section, 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.
CHAPTER 3  CONSTITUTIONS, STATUTES, ADMINISTRATIVE LAW, AND COURT RULES

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 if other sections in some way affect or relate to the section you are researching.

For Example  Section 611-9 of the 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 entirely by the testator in his 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. Also, if the statute refers to another section, read that section to determine how the section affects the statute.

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

The term shall makes the duty imposed mandatory—it must be done. The term 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 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.”

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The use of *or* 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 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* means that both conditions must be met for the will to be valid.

7. Keep in mind the canons of construction when reading. These are presented in section VII of this chapter.

### 2. Identify the Statutory Elements

After you carefully read the statute, the next part of step 2 is to analyze the section of the statute in question. What does the statute specifically declare, require, or prohibit? How does the statute apply? 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 are 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 the statute down 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 statutory 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 by reading the entire statute, analyzing each sentence word by word, and listing everything 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 that 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 and determine the elements. For the implied warranty of § 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 previously does not read “seller of goods”; it only states “the seller.” You know “of goods” is required because in step 1, in order to determine if 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 Act 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 the phrase, “has 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, then 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, which may be accomplished in several ways. One way is to chart the elements of the statute. Next to the elements, 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 apply to match or establish the elements. The following examples 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.

<table>
<thead>
<tr>
<th>STATUTORY ELEMENTS</th>
<th>FACTS OF CLIENT’S CASE</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Seller of goods</td>
<td>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”).</td>
</tr>
<tr>
<td>2. Has reason to know the buyer’s purpose in purchasing the goods</td>
<td>Tom explicitly told the seller the purpose for buying the goggles.</td>
</tr>
<tr>
<td>3. Has reason to know of buyer’s reliance on seller’s judgment</td>
<td>This is implied from Tom’s conduct of allowing the seller to select the goods without any input from Tom.</td>
</tr>
</tbody>
</table>

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

4. Reliance by buyer on seller’s skill or judgment

5. At the time of contracting

FACTS OF CLIENT’S CASE

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 statute covers the conduct of the salesperson 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 item sold meets the definition of goods.
2. At the time of the sale, the buyer informed the seller 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 sale, not later.

2. Narrative Summary

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

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 § 56-6-1? The application of step 2 reveals the statute requires an open meeting 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 met.

When performing step 3, remember to match the client’s facts with the required elements of a statute. When this is accomplished, you can determine how the statute applies. In the example concerning the purchase of goggles, 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; 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 if 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 are other general considerations to keep in mind when analyzing statutory law. These considerations are presented in the following section.

VII. 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 meaning. 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, then no additional inquiries concerning the meaning of a statute are allowed. If there is still an ambiguity in the meaning of a statutory section, then the court will look to the legislative history of the statute and apply canons of construction.

When engaging in statutory analysis, be mindful of 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 a statute and how it will be applied to coincide with that of the court. Each of these considerations is addressed in this section.
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 consists 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. Researching legislative history is discussed in Chapter 6.

B. Canons of Construction

Canons of construction are rules and guidelines the courts use when interpreting statutes. A fundamental rule of construction that determines when canons of construction are applied by a court is the plain meaning rule, which governs when the canons of construction apply. If the meaning 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 individually addressed in this text. Some well-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, glass blowers, painters, poets, writers, and sculptors, but does not include weavers, weavers are not covered by the statute. Only the occupations listed are covered, all other occupations are not covered.

Note, however, that a statute often is 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

The Latin term ejusdem generis 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.” Here “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
The Latin term *pari materia* translates as “on the same subject matter.” This canon 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 each statute has a definitions section that gives a clearly different meaning.

4. Last Antecedent Rule
The last antecedent rule states: 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 that “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
Intended remedy means that 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.

**VIII. KEY POINTS CHECKLIST: Working with Statutes**
Keep the following key points in mind when working with statutes:

- When conducting research, identify the question or research terms as narrowly and concisely as possible.
- *Always* update your research—check the pocket parts and supplements to make sure that the statute has not been changed or repealed.
- When researching federal regulatory law, it is easier to use the *Code of Federal Regulations* than the *Federal Register*. 
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; there may be another section, such as a definitions section, which 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 you know the meaning of a word. 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 construction. Are there court opinions that interpret the statute? Are there secondary sources such as law review articles or encyclopedia sections that discuss the statute?

IX. APPLICATION

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, Alan’s assignment is to determine if 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. The scope of his research has been narrowed greatly by the assignment. He needs to locate the sales provisions of the commercial code, then identify the statutes that address warranties. Alan can look to various terms in the index of the statutes, such as sales, commercial code, warranties, and contracts. He may look to the popular name table for commercial code, or sales of goods. If he is conducting research electronically, he may begin with the terms contracts, sales, and warranties.

His 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 for which the goods are required and that 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, Alan applies the steps recommended in this chapter.

**Step 1. Determine If the Statute Applies**

When reviewing the statutes, Alan notes that § 29-2-102 provides that the Commercial Code Sales Act only applies to the sale of goods. If this transaction is not a sale of goods, then neither the statute nor the warranty provisions of the act 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 $20 for a perm kit. The perm kit is clearly goods under the act. The transaction is a mixed transaction involving both services and goods. Alan’s review of the statute indicates that there is no section that addresses mixed transactions.

Because the statute does not give guidance concerning mixed transactions, Alan 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 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. The salon charged $20 for the perm kit (goods) and $80 for giving the permanent (services). Alan concludes that under the predominant factor test, the service predominates the transaction and thus appears to be a service contract not covered by the act. After performing step 1, Alan concludes that there is no warranty relief available against Beauty Care Beauty Salon because the Commercial Code Sales Act does not apply to the transaction.

Alan’s conclusion is based on his interpretation of the law. Because he is new at statutory analysis, however, Alan knows his analysis could be wrong. To be on the safe side, he continues his analysis in order to provide his supervisory attorney a complete review of the law. Alan proceeds to steps 2 and 3.

**Step 2. Analyze the Statute**

If the act does apply, that is, if the conclusion is the transaction is a sale of goods rather than a service, which of the warranty remedies, if any, would be available to Mrs. Jackson?
Alan carefully reads the statute and determines that the three warranties included in § 29-2-313, § 29-2-314, and § 29-2-315 are the only possible warranties available in the act. Which of these would apply?

Clearly § 29-2-313 and § 29-2-315 would not apply. Section 29-2-313 requires some affirmation or promise by the seller relating to the quality of the goods. In Mrs. Jackson’s case, there was no statement by the beautician, either oral or written, concerning the quality of the permanent. Section 29-2-315 also would not apply, as Mrs. Jackson did not communicate any particular purpose for which the goods were required. Also, there are no facts to indicate that she in any way relied on the beautician’s expertise in selecting the permanent, although it could be argued that this is implicit in getting a permanent. To be on the safe side, Alan reviews the courts’ interpretation of the term particular purpose. The case law indicates that the term refers to a unique and specific purpose for which the goods are required that is clearly and specifically communicated by the buyer to the seller. The facts in Mrs. Jackson’s case show there was no specific communication.

Alan’s last hope is § 29-2-314. He reads the statute and identifies the following as the elements of an implied warranty of merchantability:

1. The transaction must be a contract for the sale of goods.
2. The seller must be a merchant of those goods.

On the face of it, it appears that this statute would apply. Alan proceeds to step 3.

**Step 3. Apply the Statute to the Legal Problem or Issue**

Alan applies the statute to the problem through the use of a chart.

<table>
<thead>
<tr>
<th>STATUTORY ELEMENTS</th>
<th>FACTS OF CLIENT’S CASE</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Contract for sale of goods.</td>
<td>Assuming that the predominant factor test led to the conclusion that this transaction is a sale of goods, not services, then this is a sale of goods transaction.</td>
</tr>
<tr>
<td>2. Seller is a merchant of those goods.</td>
<td>The act defines merchant as a person who deals in goods of the kind sold. If the beauty salon and the beautician routinely sell perm kits, then the seller is a “merchant.” Here, the salon routinely sells perm kits when it charges for them as part of a permanent. Therefore, the seller is a “merchant.”</td>
</tr>
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</table>

After performing this step, Alan can reach a conclusion on whether the statute applies and whether Mrs. Jackson has a cause of action for breach of warranty under § 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 was a contract for the sale of goods by a merchant of those goods.

Under § 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 broke off and changed color. If § 29-2-314 applies, Mrs. Jackson clearly has a claim for breach of warranty. Remember, however, the conclusion in step 1 was that § 29-2-314 does not apply because the transaction is probably a sale of a service, not goods. Note: Alan went through steps 2 and 3 because he is new at statutory analysis and wanted to make sure his analysis was correct. An experienced researcher would stop at step 1.
B. Will Revocation Statute

Section 50-5 of the state statutes 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 If 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. Read and 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 the prior will
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 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 if 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 steps recommended, subsections (a) and (b) of the statute were eliminated from consideration, and subsection (c), which could apply, was identified. 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. The research should begin with a review of the case annotations following the statute to determine if a court has interpreted “in the testator’s presence.”

**Summary**

This chapter focuses on how to research and analyze enacted law and court rules. The principles presented in the chapter apply to the research and analysis of constitutions, statutory law, administrative law, and court rules.

An increasingly expanding source of law in the United States is statutory law. This body of law assumes a greater role because many matters once covered by the case law are now addressed by state and federal legislative bodies. As a result of this growth, researchers are more frequently engaged in analyzing legal problems and issues governed by statutory law.

Statutory research is the process of finding the statutory law that applies to a problem. Most federal and state laws are organized according to topic (codified) and published with annotations. The beginning step of all research, including statutory research, is to identify what you are looking for as precisely and narrowly as possible. Most statutes are located through the use of the general index, although they also may be found through the use of the table of contents or the popular name table.
Administrative law is the body of law that results from the rules and regulations of administrative agencies and the court opinions interpreting them. The main research source for locating federal administrative law is the Code of Federal Regulations. Court rules regulate the conduct of matters brought before the court.

The analysis of enacted law and court rules is the process of determining if a law applies, how it applies, and the effect of that application. For the sake of clarity, the chapter discussion and examples focus upon the analysis of laws passed by legislative bodies, called statutory law. A prerequisite to analyzing a law is a familiarity with the parts or components of the law.

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

The first step is to determine whether the statute governs the situation in any way. This step involves locating all the possible statutes that may apply, then deciding which apply to the facts raised by the legal problem.

The second step is to carefully read the statute 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 to apply the elements to the facts of the legal problem. This involves matching the elements of the statute to the facts of the case and determining how the statute applies.

When engaging in statutory analysis, it is important to be mindful of certain guidelines. 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 locate and analyze statutes 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.

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Internet Resources

http://www.law.cornell.edu
Through this site maintained by Cornell Law School you may obtain the Code of Federal Regulations, the Federal Rules of Civil and Criminal Procedure, and other court rules. The United States Code is also available at this site.

http://www.findlaw.com
FindLaw is an excellent source to locate state statutes. Simply type in the name of the state you are researching. Court rules and some state administrative regulations also may be found at this site.

http://www.lawsonline.com
This site provides links to state and federal law sources.

http://www.access.gpo.gov
This Government Printing Office site provides access to the United States Code, the Code of Federal Regulations, the Federal Register, and numerous other documents.

http://www.house.gov
This site is the home page for the United States House of Representatives.

http://www.senate.gov
This site is the home page for the United States Senate.

http://www.lcweb.loc.gov
This is the site for the Library of Congress.

Statutory Citation

The Bluebook and ALWD Citation Manual rules governing statutory citation are discussed in Chapter 8. If the document you are working on may be filed in a court, such as a state supreme court, check the court rules for any citation rule that may differ from the Bluebook or the ALWD. The following are examples of federal and state citations.

A. Constitutions
   U.S. Const. Art. IV § 3
   N.M. Const. Art. IV § 1

B. Federal Citation

C. State Statutes
   Cal. Com. Code § 2314 (West 1964)

D. Administrative Law

E. Court Rules
   The rules are cited according to Bluebook format. see Chapter 8 for additional information on citing rules.
   Fed. R. Civ. P. 4
   Fed. R. Crim. P. 18
Exercises

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

ASSIGNMENT 1
Mary and Tom have lived together for eight years in the state, but they have never married. They are buying a home together and they share a checking and savings account. Do the laws of your state recognize common law marriage? If so, do Tom and Mary have a common law marriage?

ASSIGNMENT 2
Irene has good credit and a good job. She believes that a landlord refused to rent her an apartment because she is a single woman. Refer to either the USCA or the USCS, and identify the federal law that governs this.

ASSIGNMENT 3
Refer to the USCA. What is the definition of a “digital audio recording device” under the copyright law?

ASSIGNMENT 4
Refer to the USCS. Cite the title and section of the code that addresses equal opportunity in contract solicitation, housing, and community development by the Federal Home Loan Mortgage Corporation.

ASSIGNMENT 5
What is the authorized term of imprisonment for a Class A felony under Title 18 of the United States Code? Cite the title and section.

ASSIGNMENT 6
Refer to the Fifth Amendment to the United States Constitution in the USCA. Cite a 1967 United States Supreme Court decision addressing the applicability of the privilege against self-incrimination in the case of juveniles.

ASSIGNMENT 7
Look up a statute in your state and identify the component parts. You may find it on the Web at http://www.findlaw.com/11stategov/co/laws or look up the statute at a local law or public library (most public libraries have the state statutes).

The following exercises present a statute followed by questions concerning the statute.

ASSIGNMENT 8
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 20 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 9
Answer the questions in assignment 8 using your state law governing arson.

ASSIGNMENT 10
What, if any, federal regulation applies to environmental impact statements for activities in Antarctica?

ASSIGNMENT 11
Refer to the Federal Register for 2001. On what page of the Federal Register is the Drug Enforcement Administration’s proposed rule for schedules of controlled substances involving electronic commerce?

ASSIGNMENT 12
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. To what type of will does this statute apply?

b. What requirements must be met for a nuncupative will to be valid, that is, what are the elements?

c. Mr. Lang, on his death bed, writes his will on a piece of note paper, signs it, and delivers it to his sister for safekeeping. Does the statute govern the validity of this will?

d. Larry, on his death bed, declares that it is his will and that all his property should go to his girlfriend Beth. There are three witnesses present: Beth, Larry’s sister Mary, and the next-door 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 30 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 13

Statute: Section 2-201, Statute of Frauds

The following statute is a section of the Commercial Code Sales Act adopted by the state legislature.

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 § 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 $500 or more to be enforceable, what is required?

c. Mary orally contracts to buy 10 car tires at $70 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 $70 each. Is the contract enforceable under the statute? If so, to what extent is it enforceable?

4. Assume both parties sign the contract and it reads 15 tires at $70 each. Is the contract enforceable under the statute? If so, to what extent is it enforceable?

5. Assume there is no written contract. The seller hands Mary a slip of paper upon 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 is it enforceable?

ASSIGNMENT 14

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. The Husband’s spouse (Wife) and two children were passengers in the car. The day after the wreck Husband told Wife that he knew that 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 20 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?