

CHAPTER 3

CONSTITUTIONS, STATUTES, ADMINISTRATIVE LAW, AND COURT RULES—RESEARCH AND ANALYSIS

Lecture Plan/Chapter Outline

I. INTRODUCTION

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.

Statutory analysis is the process of determining if a statute applies, how it applies, and the effect of that application.

II. ANATOMY OF A STATUTE

Understanding the structure of statutory law is essential to effective statutory analysis. A researcher must be able to identify whether the **statutory scheme** (organizational structure of the statutory law) assists in determining if a particular statute is applicable to a set of facts or whether other sources need to be consulted to determine the applicability of the law.

A. Numbers

Each statute has numbers assigned for each section of the statute.

Most laws are divided into broad categories, each of which is assigned a **number**. Those broad categories are divided into topics or smaller categories that are also assigned numbers. The topics are further divided into subtopics, each of which is assigned a number, and so on.

B. Short Title

The **short title** is the name by which the statute is known.

C. Purpose Clause

The **purpose clause** includes the purpose the legislative body intended to accomplish when drafting the statute.

D. Scope

Some statutes have sections that state specifically what is and is not covered by the statute. These are called **scope** sections.

E. Definitions

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

F. Substantive Provisions

The substantive sections set forth the substance of the law. They establish the rights and duties of those governed by the statute: that which is required, prohibited, or allowed.

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.

G. Annotations/Reference Information

Following each section of a statute is **reference information**, usually referred to as annotations, which 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
- Historical and statutory notes
- Official comments on the section
- Cross-references to other related statutes

- Library references/research guides—references to other sources that may be useful when analyzing the statute, such as books, digest key numbers, law review and other articles, *ALR* cites, and legal encyclopedia cites that discuss the section (*C.J.S.*, *Am. Jur.* 2d, etc.)
- Notes to decisions—the name, citation, and summaries of key court decisions that have discussed, analyzed, or interpreted the statute

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

III. STATUTORY RESEARCH—LOCATING STATUTES

Statutory research is the process of finding the statutory law that applies to a problem. The U.S. Constitution is included with the *United States Code Annotated* and the *United States Code Service*, the main research sources for federal law, and most state constitutions are included with the state statutes.

A. Federal Law

1. Publication

The full text of each law is published separately by the U.S. Government Printing Office and is referred to as a **slip law**. At the end of each session of Congress, the slip laws are placed in chronological order (organized according to the date the law was passed) and published in volumes titled the *United States Statutes at Large*.

In the *United States Code*, the laws contained in the *United States Statutes at Large* are organized (codified) by subject into 50 categories called titles. The *United States Code* is the official code of the laws of the United States. A publication of a code of laws is considered an official code when the government itself publishes the code or arranges for or directs a commercial publisher to publish the code.

2. United States Code Annotated

The *United States Code Annotated (USCA)* is not an official code, as it is published by West Group (and is available on Westlaw). The *USCA* consists of approximately 200 volumes. The first volumes contain the U.S. Constitution with annotations. Subsequent volumes include the entire text of the 50 titles of the United States Code. The *USCA* includes:

- a. General Index
- b. Pocket Parts and Supplementary Pamphlets
- c. Popular Name Table—a list of the popular names of statutes, such as the Americans with Disabilities Act and the Freedom of Information Act
- d. Conversion Tables—can be used to find where the law is classified in the *USCA*

3. United States Code Service

The *United States Code Service (USCS)* is not an official code, as it is published by LexisNexis. The *USCS* consists of approximately 150 volumes and contains the wording of the federal statutes published in the *Statutes at Large*.

Similarities between the *USCA* and *USCS* are that both sets:

1. Are organized in the same way
2. Have general indexes, popular name tables, and conversion tables
3. Are annotated
4. Are similarly updated

Differences between the *USCA* and *USCS*:

1. The *USCA* includes more court decisions in the “Notes of Decisions” section of the annotations. The *USCS* tends to be more selective and references 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.
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.

B. State Statutory Law and Codes

The enactment and publication of state legislation varies in detail from state to state, but 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.
- Some statutes have popular name tables and conversion tables that can be used 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.
- 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.

C. The Research Process—Techniques and Strategies

1. Locate the Statute

The beginning step of all research, including statutory research, is to identify what you are looking for as precisely and narrowly as possible. After you have defined your search as concisely as possible, there are three main ways to approach locating a statute:

- a. General Index
- b. Title Table of Contents
- c. Popular Name

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.

D. Ethics—Competence and Diligence

There are considerations of **ethics** to keep in mind when conducting any kind of research. 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.

IV. ADMINISTRATIVE LAW

The body of law that results from the rules and regulations and the court opinions interpreting them is called **administrative law**.

A. Federal Administrative Law

1. Publication

Administrative regulations are published in two sources:

- 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 others
- b. Code of Federal Regulations (CFR). The regulations of administrative agencies are codified in this multivolume, softbound set of books.

1. Researching Federal Administrative Law

The following guides focus on researching the *CFR*.

- a. Indexes and table of contents
- b. Other sources for locating rules and regulations—secondary sources, such as law review articles and *ALR* annotations
- c. Federal Register
- d. Computer-aided research
- e. Court and administrative decisions—may be available through the Government Printing Office and through commercial publishers, such as CCH and BNA (discussed in this chapter); administrative and court decisions can also be accessed through Westlaw and LexisNexis
- f. Updating administrative law research—the Code of Federal Regulations is updated by consulting the List of CFR Sections Affected (LSA)

B. State Administrative Law

The publication of state rules and regulations varies from state to state. The publication and research of state administrative law often follows in varying degrees that of federal administrative law.

V. COURT RULES

Court rules regulate the conduct of matters brought before the court. The Federal Rules of Civil and Criminal Procedure are included in the *United States Code*.

The state and federal rules are available on Westlaw and LexisNexis, through <http://www.findlaw.com> and the state or individual court website.

Local 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.

VI. ANALYSIS—THE PROCESS

The analysis of enacted law and court rules is a 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 a constitutional, statutory, or administrative law provision, or a court rule, it is helpful to have an approach—an **analysis process**. A three-step approach is recommended.

A. Step 1: Determine If the Statute Applies

1. Locate all applicable statutes.
2. Determine which statutes apply by asking does the general area of law covered by this statute apply to the issue raised by the facts of my client's case?
 - Reference to case law may be necessary to determine if a statute governs a situation.
 - It may be that two laws govern a legal question. In this event, two causes of action may be available.
 - Always check the effective date of the statute to be sure that the statute is in effect.
 - Always check the supplements to the statute to make sure that the statute you are researching is the latest version.

B. Step 2: Analyze the Statute

Carefully read and analyze the statute to determine how it applies. Some statutes are lengthy and difficult to understand. Step 2 involves two parts:

1. Read the Statute

- a. Read the statute carefully several times.
- b. Does the statute set a standard or merely provide factors that must be considered?
- c. Does the statute provide more than one rule or test? Are other rules or tests available?
Are there exceptions to the rule or test?
- d. All the words and punctuation have meaning. Always check the definitions section for the meaning of a term.
- e. Review the entire statute (all sections) to determine if other sections in some way affect or relate to the section you are researching.

- f. Certain common terminology must be understood. Be aware of the meaning of commonly used terms such as shall, may, and, and/or. Shall makes the duty imposed mandatory. It must be done. May leaves the duty optional. If and is used, all the conditions or listed items are required. If the term or is used, only one of the conditions or listed items is required.
- g. Keep in mind the cannon of constructions when reading.

2. Identify the Statutory Elements

What does the statute specifically declare, require, or prohibit? 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.

Identify the elements or requirements of the statute by reading the entire statute, analyzing each sentence word by word, and listing everything that is required.

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

This entails applying or matching the facts of the client's case to the elements of the statute. Match the client's facts with the required elements of the statute.

1. Chart Format

Utilize a chart that lists the elements of the statute.

2. Narrative Summary

Use a narrative summary of the elements and how the facts of the case match or establish the elements.

VII. GENERAL CONSIDERATIONS

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

1. Legislative history
2. Canons of construction

The **plain meaning rule** mandates that a statute will be interpreted according to its plain meaning. Words will be interpreted according to their common meanings. The court will render an interpretation that reflects the plain meaning of the language and is consistent with the meaning of all other sections of the act.

A. Legislative History

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

B. Canons of Construction

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

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.

2. Eiusdem Generis

The Latin term *eiusdem generis* means “of the same genus or class.” 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.

3. *Pari Materia*

The Latin phrase *pari materia* translates as “on the same subject matter.” Statutes dealing with the same subject should be interpreted consistently.

4. Last Antecedent Rule

Qualifying words and phrases apply to the words or phrase immediately preceding and do not extend to other more remote words or phrases.

5. Intended Remedy

Statutes are to be interpreted in a manner that furthers the intended legislative remedy.

6. Entire Context

The words, phrases, and subsections of a statute are to be interpreted in the context of the entire statute.

7. Constitutionality

Statutes are assumed to be constitutional and should be construed in a manner that preserves their constitutionality, if possible.

8. Criminal Statutes

Criminal statutes are to be narrowly interpreted.

VIII. CITING CONSTITUTIONS, STATUTES, ADMINISTRATIVE LAW, AND COURT RULES

A. Citing Constitutions

The citation format for constitutions is in Bluepages B11 and Rule 11 of the Bluebook and Rule 13 of the ALWD Guide.

B. Citing Statutes

The citation format for statutes can be found in Bluepages B12 and Rule 12 of the Bluebook and Rule 14 of the ALWD Guide.

1. General Rules When Citing Statutes

a. Official versus Unofficial Codes.

The official code should be cited when a statute is found therein. Citing to unofficial codes is permissible but requires that the name of the publisher, editor, or compiler be included in the parenthetical with the year of the code.

b. Print versus Electronic Databases

When citing a print source be mindful of whether material is taken from main volumes or supplemental volumes.

c. Section Symbol and Multiple Sections

The section symbol is used to indicate a section of a statute.

d. Short Citation Format

Once citation to a statute has been presented in a document in the full format, subsequent cites may be in short citation format.

2. Session Laws and Slip Laws

If a citation is not available in the official or unofficial codes, then it is appropriate to cite the session law.

C. Citing Administrative Law

The citation format for administrative law can be found in Bluepages B14 and Rule 14 of the Bluebook and Rule 19 of the ALDW Guide.

D. Citing Court Rules

The citation format for court rules can be found in Bluepages B12 and Rule 12 of the Bluebook and Rule 17 of the ALWD Guide.

E. Sections and Paragraphs

Teaching Tips

Emphasize that knowing the anatomy of a statute (the statutory sections, such as the definition section, scope, and substantive provisions) is important and that the entire statute should be reviewed, not just a substantive provision. For example, students may tend to read only the substantive statute they have looked up and fail to read the definition section or other sections of the statute that may affect the application of the section they have located. Also, emphasize the value of the reference information following the statutory provision.

Emphasize that, when analyzing a statute, it is important to identify all the requirements (elements) of the statute and that there must be facts that meet each element for the statute to apply.

Suggested Assignments

1. Refer to Assignment 7 of the Chapter Exercises. Have students refer to the statutes and answer the following questions.
 - How is murder in the first degree defined?
 - Does your state recognize nuncupative wills—and, if so, what is required?
 - Does your state allow holographic wills—and if so, what is required?
 - What is the citation of the Statute of Frauds section of the State Commercial Code?
 - Does your state have a statute protecting privileged communications between spouses? If so, what is the citation and what communications are privileged?
2. Have students locate your state law governing nuncupative wills and complete Assignment 12A–D using that law rather than the law presented in this assignment.
3. Have students locate the statute of frauds section of your state’s commercial code and complete the assignment using that law rather than the law presented in Assignment 13A–C.
4. Have students locate your state law governing privileged spousal communications and complete Assignment 14A–C using that law rather than the law presented in Assignment 14.

Text Assignments: Answers

ASSIGNMENT 1

Answers will vary depending on the state.

ASSIGNMENT 2

The Fair Housing Act, 42 U.S.C. §3601 *et. seq.* The easiest way to find this is by consulting the popular name table under “Fair Housing Act.” Whether the state has a law depends on the state.

ASSIGNMENT 3

17 U.S.C.A. §1001, under COPYRIGHTS—Digital audio recording device in *USCA* index. Section 1001(3):

A “digital audio recording device” is any machine or device of a type commonly distributed to individuals for use by individuals, whether or not included with or as part of some other machine or device, the digital recording function of which is designed or marketed for the primary purpose of, and that is capable of, making a digital audio copied recording for private use except for—

- (A) Professional model products, and
- (B) Dictation machines, answering machines, and other audio recording equipment that is designed and marketed primarily for the creation of sound recordings resulting from the fixation of nonmusical sounds.

Answers will vary regarding what Internet source was used.

Answer should be Yes if checking the currentness of the section was allowed.

In June 2017 answer is Current through P.L. 115-40. Answer will vary with each passing legislative session.

ASSIGNMENT 4

Federal Home Loan Mortgage Corporation, 12 U.S.C. §4520. Under MINORITY BUSINESS ENTERPRISE—Federal Home Loan Mortgage Corporation.

12 U.S.C.A. §1833e in print was last updated March 2014, but if a school library does not keep their U.S.C.A. updated, answers may vary.

Answers will vary regarding what Internet source was used.

Answer should be Yes if checking the currentness of the section was allowed.

In June 2017 answer is Current through P.L. 115-40. Answer will vary with each passing legislative session.

ASSIGNMENT 5

18 U.S.C.A. §175, the authorized term of imprisonment for possession of biological weapons by a restricted person is “fined as provided in this title, imprisoned not more than 10 years, or both, but the prohibition contained in this section shall not apply with respect to any duly authorized United States governmental activity.” This is Title 18 Section 175(b). The current print edition is the 2012 edition started shipping in 2013, the volume containing this statute is dated 2013. Answers will vary regarding Internet source. Answer should always be Yes regarding checking the currentness of the section. In June 2017 answer is Current through P.L. 115-40. Answer will vary with each passing legislative session.

ASSIGNMENT 6

Fifth Amendment, headnote 18—Juveniles. Application of *In Re Gault*, 387 U.S. 1, 87 S.Ct. 1428, 18 L.Ed. 2d 527 (1967).

ASSIGNMENT 7

Answers will vary for each part of this assignment.

Pages: 63115–63117

Effective Date: October 19, 2015

ASSIGNMENT 8A

The elements of arson are the following:

1. A person . . . knowingly [that is, intentionally]

2. 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.

ASSIGNMENT 8B

Tom has committed arson because all of the elements are met.

1. He acted knowingly—he did not accidentally blow up the barn.
2. By use of an explosive, he destroyed the barn.
3. He destroyed property—a barn is property.
4. The property belonged to another—a neighbor.
5. He acted without consent—assuming that the neighbor did not consent (there are no facts given concerning consent).

ASSIGNMENT 8C

1. If the statute is strictly construed, Lois has probably not committed arson because she did not “knowingly” set fire to the house. She accidentally set fire to the house. Case law should be consulted because the courts may have ruled that certain conduct, such as lighting a match to locate a safe after breaking into a house, is acting “knowingly” within the meaning of the statute. If that is the case, then Lois has committed arson because the remaining four elements are present.
2. She set fire to the house.
3. She set fire to property—a house is property.
4. The property belonged to another—assuming that Lois did not break into her own house.
5. She acted without consent—assuming that the owner did not consent (there are no facts given concerning consent).

ASSIGNMENT 8D

Dai has committed arson because all of the elements are met.

1. She acted knowingly—she did not accidentally set the building on fire.
2. She set the building on fire.

3. She set fire to property—the diner is property.
4. The property belonged to another—the property did not belong entirely to Dai because she owned the building with Steve. Steve owned an interest in the building. When Dai set fire to it, she set fire to the property of “another”—Steve’s property interest in the building.
5. She acted without consent—assuming that Steve did not consent (there are no facts given concerning consent).

ASSIGNMENT 9

Answers will be similar to the answers to Assignment 8A–D, but they may vary according to state law.

ASSIGNMENT 10

40 C.F.R. 8. C.F.R. Index under Environmental Impact Statements—Environmental Protection Statements—Antarctica, nongovernmental activities, environmental impact assessment.

ASSIGNMENT 11

Page 63115. Federal Register Index Vol. 80, No. 201. The final rule is effective October 19, 2015.

ASSIGNMENT 12A

The statute applies to nuncupative wills. A nuncupative will is an oral will, a will that is not written.

Instructor’s Note: You may want to require students to answer this question with a legal dictionary definition of *nuncupative*.

ASSIGNMENT 12B

The elements of the statute are as follows:

1. The testator must be in imminent peril of death.
2. The testator must have died as a result of the impending peril.
3. The testator must have declared the will to be his last will.
4. The testator must have made the declaration before two disinterested witnesses.
5. The will must be reduced to writing by or under the direction of one of the witnesses.

6. The reduction to writing must take place within 30 days after the declaration.
7. The will must be submitted for probate within six months after the death of the testator.

ASSIGNMENT 12C

The statute does not apply to this situation. The statute applies to nuncupative (oral) wills. It does not apply to written wills. The facts in Assignment 12C involve a will written by the testator. Mr. Lang's will would be governed by the statutes dealing with holographic wills, wills written by the testator, usually handwritten.

ASSIGNMENT 12D PART 1

There is insufficient information provided in the problem to determine if the will is valid under the statute. The following information is necessary.

1. It must be determined if Larry (the testator) was in imminent peril of death when he made the declaration. The statute requires that the testator be "in imminent peril of death." Even though Larry was on his deathbed, the facts do not state that he was in imminent peril of death (although this probably can be assumed).
2. It must be determined if Larry died of the imminent peril. The statute requires that the testator must die "as a result of the impending peril." The facts do not state that Larry died as a result of the impending peril. Although the facts state that Larry was on his deathbed, and one would tend to assume that he died as a result of the peril, there is no direct statement to this effect in the facts. One must determine if Larry indeed died of the peril and not assume that this is the case.

Instructor's Note: Students should be advised to beware of making assumptions. A good rule to follow is to not assume anything; rather, be sure. If necessary, gather more information or conduct additional research.

3. It must be determined if Larry's sister Mary and his neighbor Tom are "disinterested witnesses" within the meaning of the statute. The statute requires that the testator's declaration be made before two disinterested witnesses. Beth is an interested witness because Larry leaves all his property to her. The other two witnesses are Tom and

Mary. If Mary or Tom is determined to be an interested witness, then there are not two disinterested witnesses. The requirement that the declaration be witnessed by two disinterested witnesses would not be met, and the will would not be valid.

Even though Mary does not inherit under the declaration of the terms of the nuncupative will, she might still inherit a portion of Larry's property pursuant to the provisions of Subsection C of the statute. Therefore, she may be considered an interested party. The relevant statutory and case law must be researched to determine what constitutes an interested witness and if Mary is an interested witness.

It must also be determined if Tom, Larry's next-door neighbor, is an interested witness. Larry may have a written will in which Tom is named as a beneficiary. Under the provisions of Subsection C of the statute, it is possible that Tom could inherit a portion of Larry's property and therefore be considered an interested witness. As in Mary's case, the relevant statutory and case law must be researched to determine if Tom is an interested witness.

4. It must be determined if the declaration by Larry was made "before two disinterested witnesses." The question is what constitutes "before." Tom heard the declaration, but he was not in the same room as Larry when the declaration was made. It must be determined if the statute requires that the witness be physically present in the same room as the testator when the declaration is made.

In order to answer this question, it will probably be necessary to research case law to determine what constitutes "before two disinterested witnesses." Although it is possible that another section of the Probate Code sets forth what constitutes proper witnessing, it is more likely that this question has been addressed by the courts.

ASSIGNMENT 12D PART 2

According to Subsection C of the statute, the nuncupative will does not revoke an existing

written will. Under Subsection C, the nuncupative will only change the written will to the extent necessary to give effect to the nuncupative will. Subsection B further limits the effect of the nuncupative will. It provides that a nuncupative will may only dispose of personal property in an aggregate value not exceeding \$1,000.

The combined effect of these two sections is that Larry's nuncupative will disposes of Larry's personal property in an amount not exceeding \$1,000. His written will is affected only to this extent.

ASSIGNMENT 13A

Section 2-201 provides that a contract for the "sale of goods . . . is not enforceable . . . unless there is some writing." The statute does not refer to the lease of goods and therefore does not appear to apply to the lease of goods. Research should be conducted, however, to determine if the "sale of goods" is interpreted to include the lease of goods. There may be a definition section of the Commercial Code Sales Act that defines "sale of goods." Also, there may be a court opinion that interprets what constitutes the "sale of goods."

ASSIGNMENT 13B

The required elements for a contract for the sale of goods of \$500 or more to be enforceable are the following:

1. The contract must be in writing.
2. The writing must be sufficient to indicate that a contract for sale has been made between the parties.
3. The contract must be signed by the party against whom enforcement is sought, that is, the party being sued or that party's authorized agent or broker.

ASSIGNMENT 13C PART 1

The statute does not limit who can enforce the contract. It does, however, provide limits against whom enforcement may be sought. The statute limits enforcement to those contracts "signed by the party against whom enforcement is sought." In other words, a contract may only be enforced against a party who signed it. Since neither party signed the contract, it is not enforceable against either party.

ASSIGNMENT 13C PART 2

The statute provides that a contract is not enforceable unless it is “signed by the party against whom enforcement is sought.” If Mary is the only party who signed the contract, under the provisions of the statute, the contract can only be enforced against her. Therefore, only the seller can enforce the contract.

ASSIGNMENT 13C PART 3

It must be assumed in Assignment 13C, Parts 3 and 4, that the written contract is “sufficient to indicate that a contract for sale has been made between the parties.” Since the contract was signed by both parties, under the provisions of the statute, it is enforceable against both parties. The fact that the contract incorrectly provides for the sale of nine tires, rather than the 10 tires the parties orally agreed on, does not render the contract unenforceable. The statute provides that a “writing is not insufficient because it omits or incorrectly states a term agreed upon.”

When, however, the contract incorrectly states a term, the statute provides that the contract is not enforceable “beyond” the quantity shown in the contract. In this case, the contract provides for the sale of nine tires. Therefore, in light of the provisions of the statute, the contract is enforceable for the sale of up to nine tires.

ASSIGNMENT 13C PART 4

The answers to Assignment 13C, Parts 3 and 4, are very similar. Because the contract was signed by both parties, under the provisions of the statute, it is enforceable against both parties. The fact that the contract incorrectly provides for the sale of 15 tires rather than the 10 tires the parties orally agreed on does not render the contract unenforceable. As noted in the answer to Assignment 13C, Part 3, the statute provides that a “writing is not insufficient because it omits or incorrectly states a term agreed upon.”

As noted in the answer to Assignment 13C, Part 3, when a contract incorrectly states a term, the statute provides that the contract is not enforceable beyond the quantity shown in the contract. In this case, the contract provides for the sale of 15 tires. Therefore, in light of the provisions of the statute, the contract should be enforceable for the sale of up to 15 tires.

The statute, however, does not address a question that is implied in this assignment. The statute only provides that the contract is not enforceable “beyond the quantity” stated in the contract. What if the written contract incorrectly states a quantity in excess of the amount orally agreed upon by the parties and a party wants the contract enforced only in the amount of the oral agreement?

In this case, the oral agreement was for 10 tires and the written contract provides for the sale of 15 tires. Is the contract enforceable for a quantity in excess of the amount orally agreed upon? A literal reading of the statute would indicate, yes; it is enforceable for a quantity of up to 15 tires, even though the parties orally agreed only to 10 tires. In this situation, it is advisable to research case law to determine if the courts have interpreted the statute to limit the enforcement of the quantity to the amount orally agreed upon by the parties—in this case, 10 tires.

ASSIGNMENT 13C PART 5

There is an enforceable contract under the provisions of the statute if the slip of paper is “sufficient to indicate that a contract for sale has been made between the parties.” The statute does not provide any guidance as to what is sufficient; therefore, research would be necessary to determine if any other statute defines “sufficient” or if the courts have interpreted what constitutes a sufficient writing under the statute.

If research indicates that the writing is sufficient, then additional research would be necessary to determine to what extent the contract is enforceable. Because the writing does not include any of the terms of the agreement, such as quantity or price, the statute is of little guidance. Court cases involving similar fact situations would have to be researched to determine how and to what extent the courts have enforced similar contracts.

ASSIGNMENT 14

Instructor’s Note: The statutory section in this assignment involves privileged communications between spouses. Often, there are other state statutes that limit this privilege. For example, some states have statutes that provide that the privilege does not apply in cases involving

child neglect and abuse. Therefore, students should be advised that they should always conduct thorough research into all related statutes.

ASSIGNMENT 14A

The statutory elements of Section 35-1-4 are as follows:

1. A husband and wife may testify for or against each other in all actions with the following exception:
2. A husband and wife may not testify
 - a. as to any communication or admission
 - b. made by either of them to the other
 - c. during the marriage.

This prohibition does not apply 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.

ASSIGNMENT 14B

As indicated in Assignment 14A, a husband and wife may testify for or against each other in all actions unless the testimony involves "any communication or admission" made by them to each other during the marriage. In addition, they may testify for or against each other concerning communications or admissions made during the marriage when the action is between the husband and wife, and directly in issue is the custody . . . of their children or children in either spouse's custody or control.

Except in the situation mentioned in the previous paragraph, a husband and wife are prohibited from testifying either for or against each other in all actions in regard to communications or admissions made to each other during the marriage.

ASSIGNMENT 14C PART 1

It is assumed that the husband and wife were married when the husband admitted he knew that he ran the stop sign because he was drunk. Since the conversation took place during the

marriage, and the lawsuit does not involve an action between the husband and wife, the wife cannot be compelled to testify concerning her husband's admission. The statute provides that "neither may testify" concerning such conversations made during the marriage. There is no provision in the statute that allows a spouse to be compelled to testify in this situation.

ASSIGNMENT 14C PART 2

The answer to this question is essentially the same as the answer to the question in Assignment 14C, Part 1. Since the conversation took place during the marriage, and the lawsuit does not involve an action between the husband and wife, the wife cannot voluntarily testify concerning her husband's admission. The statute provides that "neither may testify" concerning such conversations. There is no provision in the statute that allows one spouse to waive the privilege.

ASSIGNMENT 14C PART 3

This question can be interpreted in two ways. Can the wife voluntarily testify concerning the conversation if the husband and wife are legally separated at the time the testimony is offered? The answer to this question is addressed in the answer to Assignment 14C, Part 4, below.

This question can also be interpreted as follows: Can the wife voluntarily testify concerning the conversation if the husband and wife are legally separated at the time the conversation took place? The answer to this question depends on how "during the marriage" is interpreted. The statute provides that neither may testify as to any communication made "during the marriage." If the conversation took place while the parties were legally separated, was it made "during the marriage" within the meaning of the statute? Does a legal separation terminate the privilege? Are the parties no longer married for the purposes of this statute when they are legally separated?

The statutes must be reviewed to determine if there is a definition or other section that defines "during the marriage." In the absence of an applicable statutory section, the case law must be researched for a court opinion that discusses whether a conversation that takes place between a husband and wife while they are legally separated is made "during the

marriage” and therefore privileged under Section 35-1-4. In the absence of statutory or case law, it would be necessary to refer to secondary authority, such as a legal encyclopedia.

ASSIGNMENT 14C PART 4

It is assumed that the conversation took place during the marriage. The question, then, is whether the statute only applies while the parties are married. In other words, if the parties are no longer married, may they testify about conversations that took place during the marriage?

The statute states that neither party may testify as to conversations between them “during the marriage.” The statute does not have a section that provides that the privilege only applies while the parties are married; the statute does not specifically require that the parties be married at the time the testimony takes place. Therefore, the privilege probably applies even when the parties are no longer married.

It is, however, possible that the statute has been interpreted differently. Therefore, research should be conducted to determine if the legislature or the courts have interpreted the statute differently.

ASSIGNMENT 14C PART 5

The answer to this question depends upon what constitutes a marriage in the state. The statute prohibits testimony as to communications or admissions made “during the marriage.” If state law recognizes common law marriages, and the husband and wife having lived together for 20 years constitutes a valid common law marriage, then they are married and the statute applies. It would be necessary to determine the answer to the following questions.

1. Does the state recognize common law marriages?
2. What is required for a common law marriage?
3. In addition to living together as husband and wife, have the parties met all the requirements for a valid common law marriage?

ASSIGNMENT 14C PART 6

More information is needed to answer this question. The statute provides that a husband or

wife may testify concerning conversations made during the marriage in actions between the husband and wife “where the custody, support, health, or welfare of their children or children in either spouse’s custody or control is directly in issue.” Therefore, it is necessary to determine what is in issue in the divorce action in order to answer this question. If the custody and other matters of the children is directly in issue, then the conversation is admissible.

ASSIGNMENT 15A

18 U.S.C. §117 (2013)—Note: Instructors should determine if any updates have occurred and are included via pocket parts.

ASSIGNMENT 15B

Penalty: “shall be fined under this title, imprisoned for a term of not more than 5 years, or both, except that if substantial bodily injury results from violation under this section, the offender shall be imprisoned for a term of not more than 10 years.”

ASSIGNMENT 15C

In this section, the term “domestic assault” means an assault committed by a current or former spouse, parent, child, or guardian of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse, parent, child, or guardian, or by a person similarly situated to a spouse, parent, child, or guardian of the victim.

ASSIGNMENT 16A

§212.52 Public involvement.

ASSIGNMENT 16B

The public shall be allowed to participate in the designation of National Forest System roads, National Forest System trails, and areas on National Forest System lands and revising those designations pursuant to this subpart. Advance notice shall be given to allow for public comment, consistent with agency procedures under the National Environmental Policy Act, on proposed designations and revisions. Public notice with no further public involvement is sufficient if a National Forest or Ranger District has made previous administrative decisions, under other authorities and including public involvement, which restrict motor vehicle use over

the entire National Forest or Ranger District to designated routes and areas, and no change is proposed to these previous decisions and designations.

ASSIGNMENT 16C

Absence of public involvement in temporary, emergency closures—

(1) General. Nothing in this section shall alter or limit the authority to implement temporary, emergency closures pursuant to 36 CFR part 261, subpart B, without advance public notice to provide short-term resource protection or to protect public health and safety.

(2) Temporary, emergency closures based on a determination of considerable adverse effects. If the responsible official determines that motor vehicle use on a National Forest System road or National Forest System trail or in an area on National Forest System lands is directly causing or will directly cause considerable adverse effects on public safety or soil, vegetation, wildlife, wildlife habitat, or cultural resources associated with that road, trail, or area, the responsible official shall immediately close that road, trail, or area to motor vehicle use until the official determines that such adverse effects have been mitigated or eliminated and that measures have been implemented to prevent future recurrence. The responsible official shall provide public notice of the closure pursuant to 36 CFR 261.51, including reasons for the closure and the estimated duration of the closure, as soon as practicable following the closure.

MindTap Supplementary Exercises: Answers

ASSIGNMENT 1

The answer to this assignment will depend on state law.

ASSIGNMENT 2

The Truth in Lending Act, 15 U.S.C.A. §1601 *et seq.*

ASSIGNMENT 3

20 U.S.C.A. §1070D-31 *et seq.* Found in the *USCA* Index under COLLEGES AND UNIVERSITIES—
Robert C. Byrd Honors Scholarship Program.

ASSIGNMENT 4

18 U.S.C.A. §3584 establishes limitations on consecutive sentences. Found in the *USCA* Index under CRIMES AND OFFENSES—Consecutive sentences, limitations.

ASSIGNMENT 5

Instructor's Note: In order to properly complete this assignment, students should look up the term *holographic* in a law dictionary.

ASSIGNMENT 5A

The statute applies to written wills, including holographic wills, which are wills handwritten by testators.

ASSIGNMENT 5B

The witnessing requirements are set forth in §15-11-502(1)(c). This section provides that two individuals must sign the will prior to or after the testator's death. They must sign within a reasonable time after they witness, in the conscious presence of the testator, either the signing of the will or the testator's acknowledgment of his signature or acknowledgment of the will. Section 15-11-1-502(2) provides that a holographic will does not have to be witnessed.

ASSIGNMENT 5C

A holographic will is valid if the signature and material portions of the will are in the testator's handwriting.

ASSIGNMENT 5D PART 1

In order to determine if the will is valid under Subsection (1) of the statute, additional information is necessary. Subsection (1)(c) provides that the witnesses must sign within a reasonable time after they witnessed, in the conscious presence of the testator, either the testator signing the will or the testator's acknowledgment of that signature or acknowledgment of the will. The witnesses did not see Joan sign the will; they witnessed it the next day. However, the testator may have acknowledged her signature or acknowledged the will the next day when the witnesses saw it. If this occurred, then under Subsection (1)(c), the will would have been validly witnessed. Therefore, this additional information is necessary to determine whether the will is valid.

ASSIGNMENT 5D PART 2

Additional facts are needed to answer this question. The facts state that Joan wrote and signed the will. Did she handwrite it or type it? A holographic will is a will written by the testator in his or her own hand. Assuming the signature and material portions of the will are written in Joan's handwriting, then the will is valid under Subsection (2) of the statute and does not require witnessing.

ASSIGNMENT 6

The answer to this assignment will depend on state law.

ASSIGNMENT 7A

Section 18-732, Burglary—Elements

1. A person knowingly (that is, intentionally)
2. enters unlawfully or remains unlawfully after a lawful or unlawful entry
3. in a building or occupied structure
4. with intent to commit a crime in the building or structure
5. against another person or property.

Section 18-760, Robbery—Elements

1. A person knowingly (that is, intentionally),
2. takes anything of value
3. from the person or presence of another
4. by use of force, threats, or intimidation.

Section 18-773, Larceny—Elements

1. A person wrongfully takes, obtains, or withholds, by any means,
2. from the possession of the owner or any other person
3. money, personal property, or article of value of any kind,
4. with intent permanently to deprive another person of the use and benefit of the property.

ASSIGNMENT 7B

Larry has committed larceny because all of the elements of the section on larceny have been met:

1. When Larry absconded with Denise's shopping bag, he wrongfully took or obtained it.
2. Larry took or obtained the shopping bag from the owner, Denise.
3. It must be assumed that the bag itself was, or contained, "personal property, or article of value."
4. It must be assumed that when Larry absconded with the bag, he intended to keep it.

Larry has not committed burglary because there was no unlawful entry of a building with the intent to commit a crime. He has not committed robbery because he did not use force, threats, or intimidation.

ASSIGNMENT 7C

Larry has committed both robbery and larceny because the elements of both statutes have been met.

Robbery

1. Larry intentionally grabbed the lady's handbag and struggled with her.
2. A handbag is something of value.
3. Larry took the handbag from another person, the lady who owned it.
4. Larry used force when he struggled with the lady for her

handbag.

Larceny

1. Larry wrongfully took the handbag when he grabbed it as he ran by.
2. Larry took the handbag from the possession of the owner.
3. A handbag is personal property.
4. It must be assumed that when Larry absconded with the handbag, he intended to keep it.

Larry has not committed burglary because there is no unlawful entry of a building with the intent to commit a crime.

ASSIGNMENT 7D

Depending on the court's interpretation of the statute, Mike has probably committed larceny because all of the elements of the section on larceny have been met. Note the discussion of the fourth element below.

1. When Mike refused to pay the bill, he acted wrongfully by withholding from the bartender money due for the tab.
2. Mike withheld payment from the bartender, the person who was the owner or other person entitled to money due for the tab.
3. It must be assumed that the tab is money.
4. It must be assumed that when Mike refused to pay the tab and left the bar, he intended to never pay it. If he intended to pay the tab the next day, then the issue is not so clear. If that was Mike's intention, then case law would need to be consulted to determine how the courts interpret the statute. The courts may interpret "permanently deprive" to mean that one intends to permanently deprive another person when he or she refuses to pay when payment is demanded. In that case, Mike, even if he intended to pay the next day, would still have "permanently deprived" the bartender of the money due.

Mike has not committed burglary because there is no unlawful entry of a building with the intent to commit a crime. He has not committed robbery because he did not take anything of value from the bartender by use of force, threats, or intimidation; he simply withheld something of value—he refused to pay. His threats to the bartender do not turn his refusal to pay into the crime of robbery.

ASSIGNMENT 7E

Depending on the interpretation of the statutes, Don has probably committed burglary and larceny because all of the elements of the sections on burglary and larceny have been met.

Burglary

1. Don intentionally entered the school bus.
2. It must be assumed that Don entered unlawfully since he entered the bus when the family was away and there are no facts indicating that he was invited into the bus.
3. The bus was occupied by the family. The statute does not require that the intruder know that the structure is occupied. If the statute were interpreted by the courts to require that the individual knew the structure was occupied, and Don did not know it was occupied when he entered, then he did not commit burglary.
4. It must be assumed that Don went into the bus searching for food that he intended to take. Although he may not have thought that taking food is a crime, taking food, like taking anything else of value in this situation, is a crime.
5. Don took property (the food) belonging to the family.

Larceny

1. Don wrongfully took the food.
2. Don took it from the possession of the owner.
3. Food is personal property.
4. It must be assumed that when Don took the food, he did not intend to give it back. Don has not committed robbery; he did not use force, threats, or intimidation.

ASSIGNMENT 8

The following are the elements of theft:

1. A person knowingly (with intent—not accidentally or inadvertently)
2. obtains (acquires possession) or exercises control over
3. anything of value
4. of another
5. without authorization, or by threat or deception.

ASSIGNMENT 9

The following are the elements of Criminal Code Section 18-5-1 Computer Crime:

1. A person knowingly (with intent—not accidentally or inadvertently)
2. accesses:
 - a. a computer,
 - b. computer network, or
 - c. computer system or any part thereof
3.
 - a. without authorization, or exceeds authorized access; or
 - b. for the purpose of executing any scheme to defraud; or
 - c. to commit theft; or
 - d. to alter, damage, interrupt the proper functioning of any computer, computer network, or computer system.

ASSIGNMENT 10

The following are the elements of Criminal Code Section 18-8-101 Murder in the First Degree:

1.
 - a. A person acts with deliberation (the death must follow the deliberation), and intends to cause the death of a person other than himself
 - b. and causes the death of that person or another person, or
2.
 - a. A person acting alone, or with one or more persons,
 - b. commits or attempts to commit arson, robbery, burglary, kidnapping, sexual assault, and
 - c. in the course of the crime,
 - d. the death of a person is caused by anyone.

The following are the elements of Section 18-8-102 Murder in the Second Degree:

1. A person knowingly (not accidentally or inadvertently)
2. causes
3. the death of a person.

ASSIGNMENT 11A

It is arguable in this situation that either murder in the first or second degree applies.

Murder in the first degree:

- a. Taylor was acting alone.
- b. Taylor was committing or attempting to commit burglary—he was entering the dwelling of another to harm him.

Instructor's Note: Burglary is usually defined as breaking and entering the dwelling house of another with the intent to commit a felony therein.

- c. Taylor clubbed the referee during the burglary.
- d. The referee died as a result of Taylor clubbing him during the burglary.

Murder in the second degree:

- a. Taylor intentionally entered the house and clubbed the referee.
- b. Taylor's act of clubbing the referee caused the referee's death.
- c. The referee died.

ASSIGNMENT 11B

In this situation, Michelle is guilty of murder in the first degree:

- a. Michelle was acting with another person.
- b. Michelle was committing or attempting to commit robbery of the convenience store.
- c. The gun was dropped and went off during the robbery.
- d. The store employee died as a result of gun going off and hitting the store employee.

Instructor's Note: The statute only requires that anyone causes the death. Therefore, it does not matter that Michelle did not drop the gun. In addition, the statute only requires that the death is caused in the course of the crime. It does not require an intentional act. Therefore, that fact that the gun was accidentally dropped and went off does not matter.

ASSIGNMENT 11C

In this situation, Hammill is guilty of murder in the first degree:

- a. Hammill acted with deliberation—he planned and intended to kill a man.
- b. Hammill’s actions caused the death of a person—the handgun fired and killed a passerby.
- c. Following Hammill’s plan and intent to kill a man, a person died.

Instructor’s Note: The statute does not require that the person that Hammill intended to kill was the one who died. It only requires that that person or another person die. In this case, another person died.

ASSIGNMENT 12

Arlo violated the computer crime statute:

1. Arlo intentionally got on the computer when Jason was gone.
2. Arlo accessed the computer when he got on and started looking through the files.
3. Arlo was not authorized to access the computer. Jason specifically told Arlo not to touch anything. Arlo could argue that he thought that Jason meant that Arlo should not touch anything else in the room and that since they were playing games on the computer, it was OK for him to touch the computer. This is a weak argument because Arlo wasn’t playing a game on the computer, he was going through files. In addition, “Don’t touch anything” is clear; the computer is “anything.”

ASSIGNMENT 13

The Dyer Act applies to the theft and transportation of motor vehicles across a U.S. border or a state line. The citation is 18 U.S.C.A. §2313. The penalty for violating the act is a fine under the act or imprisonment of not more than 10 years or both. The act is located by looking for the Dyer Act in the popular name table of the *USCA*.

ASSIGNMENT 14

In the *USCS* table of contents, look under Copyrights, then Duration of Copyrights. In general, the “copyright for a work created on or after January 1, 1978, subsists from its creation and . . . endures for a term consisting of the life of the author and 70 years after the author’s death.” The citation is 17 U.S.C.S. §302.

MindTap Study Questions: Answers

1. Laws passed by Congress or state legislatures are generally called acts or statutes. This body of law is commonly referred to as statutory law.
2. Statutory analysis is the process of determining if a statute applies, how it applies, and the effect of its application.
3. Scope sections state what is specifically covered and not covered by a statute.
4. Statutory annotations are references to various sources of information related to the section. They follow the statutory section.
5. Six types of statutory sections not included in the example in the text are sections that do the following:
 1. State which administrative agency is responsible for administering the act
 2. Incorporate by reference sections of other statutes
 3. Limit the application of the statute through exceptions
 4. Establish when the statute takes effect
 5. Repeal other statutes
 6. State that the statute is cumulative to the case law and that other remedies still exist
6. Five types of reference information that may follow a section of a statute are the following:
 1. The history of the section, including dates of amendment
 2. Official comments on the section
 3. Cross-references to other related statutes
 4. Library references/research guides—references to other sources that may be useful when analyzing the statute, such as books and digest key numbers
 5. Notes to decisions—the names, citations, and summaries of key court decisions that have discussed, analyzed, or interpreted the statute
7. Statutory supplements are located immediately following the statute or in a separate section or pamphlet.

8. The full text of each law is published separately by the U.S. Government Printing Office and is referred to as a slip law.
9. The names of the two commercial publications of the *United States Code* are the *United States Code Annotated* and the *United States Code Service*.
10. After you have defined your search as concisely as possible, the following are the three main ways to approach locating a statute:
 - a. General index
 - b. Title table of contents
 - c. Popular name table
11. 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.
12. Administrative law is the body of law that results from the rules and regulations and the court opinions interpreting them.
13. The Federal Rules of Civil and Criminal Procedure are included in the *United States Code*.
14. Local rules are court rules 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, how to file by facsimile transmission, and so on.
15. The three-step approach recommended for analyzing a legal problem governed by statutory law is as follows:
 - STEP 1:** Determine if the statute applies.
 - STEP 2:** Analyze the statute.
 - STEP 3:** Apply the statute to the legal problem or issue.
16. The two formats that may be used to apply or match the facts of the client's case to the elements of a statute are the chart or narrative summary format.
17. Legislative history is the record of the legislation during the enactment process before it became law.

18. The plain meaning rule 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.
19. Legislative history may be of assistance when interpreting a statute in helping identify why an ambiguous term was used and what meaning the legislature intended; what the legislature intended the statute to accomplish; and the general purpose of the legislation.
20. Canons of construction are rules and guidelines the courts use when interpreting statutes.
21. Official versus unofficial codes. Print versus electronic databases. Section symbol and multiple sections. Short citation format.