PART I  STUDY OUTLINE

I. INTRODUCTION

Any legal solution to a client’s problem involves the application of the law to the facts of the client’s case.

Before a legal solution to the client’s problem can be found or a determination made whether a lawsuit should be filed, it is necessary to identify the facts that are critical to the outcome of the case—the key facts.

Often the importance of certain facts may not be determined until the legal issues and the governing law are identified.

II. KEY TERMS

Key terms are terms that help guide the researcher in the area being researched. When identifying key terms, keep in mind the following:

- Parties involved, for example, private citizen, corporation, public official
- Places and things, for example, public or private property (places) or cars or automobiles (things)
- Actions or omissions that form the basis of the case, for example, negligence, intentional acts
- Defenses available, for example, self-defense
- Relief sought, for example, money, injunction

III. FACTS IN GENERAL

Ethics. Rule 1.1 of the American Bar Association’s Model Rules of Professional Conduct requires that a client be provided competent representation. A failure to conduct a proper interview and identify the key facts denies the client competent representation.

IV. FACTS—DEFINITION

A fact is something that is real, that actually exists—an actual event, as opposed to an
opinion or someone’s interpretation of what took place. In a lawsuit, a fact is information present in the case concerning some thing, action, event, or circumstance.

A rule of law is a standard, established by a governing authority, that prescribes or directs action or forbearance. It may be a constitutional provision, statute, ordinance, regulation, or case law doctrine.

V. IMPORTANCE OF FACTS

Our legal system revolves around resolving disputes by applying the rules of law to the facts of a case.

The issue is the precise question raised by the specific facts of the client’s case. Therefore, the facts are an essential element of the issue.

Facts are also important because determining how or if a law applies to the client’s case often depends upon the presence or absence of certain facts.

Another reason facts are important is that the determination of whether a court opinion is on point is largely governed by the similarity between the facts of the court opinion and the facts of the client’s case.

VI. TYPES OF FACTS

A. Irrelevant Facts

Irrelevant facts are coincidental to the event but are not of significant legal importance in the case.

B. Background Facts

Background facts are those irrelevant facts that put the key facts in context. They give an overview of the factual event and provide the reader with the overall context within which the key facts occurred.

C. Key Facts

See the definition below in the next section.

VII. KEY FACTS—DEFINITION AND TYPES

A. Definition

Key facts are the legally significant facts of a case that raise the legal question of how or whether the law governing the dispute applies. They are those facts upon which the outcome of the case is determined: the facts that establish or satisfy the elements of a cause of action and are necessary to prove or disprove a claim. A key fact is a fact so essential that, if it were changed, the outcome of the case would probably change. A useful test in determining whether a fact is key is to ask the question, “If this fact is changed, would the outcome of the application of the law be affected or changed?”

B. Types of Key Facts

1. Individual Key Facts
Often an individual or several individual facts are key facts in a case. A key fact is an individual key fact if it meets the following test: If the fact is changed, the outcome of the case is affected or changed.

2. Groups of Facts

In some fact situations, no individual fact standing alone is a key fact—that is, no single fact is so significant that, if changed, would change the outcome. Recognizing groups of facts is important because, when analyzing a case, you must be aware that individual facts that seem to be insignificant may be key facts when considered and weighed as a group.

VIII. KEY FACTS IDENTIFICATION—CLIENT’S CASE

A. Step 1: Identify Each Cause of Action

Identify each cause of action possibly raised by the facts.

B. Step 2: Determine the Elements

Determine the elements of each cause of action identified in step 1.

C. Step 3: List All Facts Related to the Elements

List all the facts possibly related to the elements of the causes of action identified in step 2. This includes gathering the facts from the client interview, and any interviews that have been conducted with witnesses, and reviewing any documents in the case file that may contain factual information.

Consider the elements of each cause of action individually when performing this task.

Some facts may establish or relate to more than one cause of action.

D. Step 4: Determine Which Facts Apply

Determine which of the client’s facts apply to establish or satisfy the elements of each cause of action—the key facts. This is accomplished by taking each element of each cause of action and identifying the facts essential to establish or satisfy that element.

- “Which of these facts, if changed, would change the outcome of the application of that element?” Or, in other words,

- “Which of these facts, if changed, would affect the determination of whether there is present a fact or facts that establishes or satisfies that element?”

E. Multiple Issues

Steps 2 through 4 should be applied to each potential cause of action identified in step 1. Some causes of action may be eliminated because there are no facts present that support the existence of an element.

Additional potential causes of action may be identified as research and investigation take place.
IX. KEY FACTS IDENTIFICATION—CASE LAW

A. Step 1: Read the Entire Case

Read the entire case with the following general question in mind: “What was decided about which facts in this case?”

- “What was decided . . .” keeps the mind focused on the holding or decision reached.
- “About which facts . . .” keeps the mind focused on specific facts, those specific facts necessary to the resolution of the legal question—the key facts.

B. Step 2: Look to the Holding

Ask the following questions to help identify the holding:

- “What is the court’s answer to the legal question?”
- “How does the court apply the rule of law to the legal question raised?”

C. Step 3: Identify the Key Facts

Identify the facts necessary to the holding. This step is composed of two parts:

1. Part 1: List All Facts Related to the Holding
   List all the facts presented in the case related to the holding.

2. Part 2: Determine the Key Facts
   From the facts listed, determine the key facts by identifying those facts necessary or essential to the decision reached. There are several ways to identify these facts.
   a. One test is to ask yourself whether the decision would have been the same if a fact had not occurred, or if the fact had occurred differently.
   b. If this test is applied to each fact and no single fact, when changed or omitted, would affect or change the decision, ask whether the decision was governed by the court’s consideration of the facts as a group.
   c. Where the court lists in its reasoning the elements of a cause of action, ask yourself which of the facts apply to establish the elements.
   d. Ask yourself whether the court indicates that a certain fact is a key fact:
      (1) Does the court describe a fact as “essential,” “key,” or “important”?
      (2) Is a fact repeated throughout the opinion, especially in the reasoning supporting the decision?
      (3) Does the court agree with a party’s description of a fact as critical or key?
      e. Does a concurring or dissenting opinion identify the key facts?

D. Multiple Issues

Apply the steps presented to determine the key facts related to each issue and holding. Follow each step completely for each issue and holding.
PART II  STUDY QUESTIONS

1. What is the role, often performed by the paralegal, in regard to the facts of a case?
2. What does Rule 1.1 of the American Bar Association’s *Model Rules of Professional Conduct* require?
3. What is a fact?
4. What is a rule of law?
5. What are irrelevant facts?
6. What are background facts?
7. What are key facts?
8. What are the two categories of key facts?
9. What is the four-step process recommended for determining which of the client’s facts are key facts?
10. When performing step 3 of the process for identifying the facts in a client’s case, what test should you apply?
11. What is the three-step process recommended for identifying the key facts in a court opinion?
12. When identifying the key facts in a court opinion, what are the two parts of step 3?

PART III  CHAPTER ASSIGNMENTS

ASSIGNMENT 1

**Facts:** The client is charged in state court with theft in violation of Criminal Code Section 18-16-401 Theft. The client manages a store for his employer. His duties include running a cash register, ordering and signing for inventory, stocking shelves, and making the daily cash and check deposit with the bank. One day an order of legal pads arrived. The invoice listed 100 pads. In the shipping box were 110 pads. The client opened the container, took the extra 10 pads, put them in his backpack, and took them home. He stocked the rest of the pads. Another employee saw the client take the pads and reported him to the employer. The employer called the police.

**Rule of Law:** Criminal Code Section 18-16-401 Theft. A person commits theft when he or she knowingly obtains or exercises control over anything of value of another without authorization, or by threat or deception.

**Assignment**

Identify the key facts in regard to the theft charges. Did the client commit theft?

ASSIGNMENT 2

**Facts:** The client, Jason, is charged with murder in the first degree. Jason hated Kim for
ruining Jason’s business. Jason decided to kill Kim. Jason followed Kim for several weeks and discovered that Kim jogged once a week next to a country road. Jason hid on a hill near where Kim jogged and planned to shoot him. As Kim ran by, Jason fired and missed. When Kim heard the report from the rifle, he felt the bullet fly by and jumped. He jumped onto the road and was hit and killed by a passing car. A witness saw Jason. He was caught and charged with a first-degree murder.

**Rule of Law:** Criminal Code Section 18-8-101 Murder in the first degree. A person commits murder in the first degree if:

a. After deliberation and with the intent to cause the death of a person other than himself he causes the death of that person or another person; or

b. Acting either alone or with one or more persons, he or she commits or attempts to commit arson, robbery, burglary, kidnapping, sexual assault, and in the course of the crime the death of a person is caused by anyone.

**Assignment**

Identify the key facts in regard to the murder charges. Did Jason commit murder?

**ASSIGNMENT 3**

Read *Baumgardner v. Stuckey* presented on the Student Companion Site Chapter 3, Assignment 3. What are the key facts?

**ASSIGNMENT 4**

Read *United States v. Kutas* presented on the Student Companion Site Chapter 5, Assignment 3. What are the key facts?

**PART IV WEB ASSIGNMENTS**

**ASSIGNMENT 1**

- Read *Hershley v. Brown* presented on the Student Companion Site Chapter 5, Web Assignment 5. Identify the key facts related to the issue of strict liability for unsuccessful sterilization.

**ASSIGNMENT 2**

- Read *State v. Wong* presented on the Student Companion Site Chapter 5, Web Assignment 6. Identify the key facts related to the issue of ineffective assistance of counsel based on the attorney’s failure to argue the insanity defense.

**ASSIGNMENT 3**

**Facts**

Tom and Wilma Roberts had been married for 10 years when, on May 21, 1991, Mrs. Roberts executed her Last Will and Testament. Tom, a compulsive gambler, had acquired
extensive debt. In an effort to protect herself from Tom’s credit problems, Mrs. Roberts devised Tom a total of $25 in her will. She wanted to make sure that some of her estate was left for her children by a previous marriage. The will provides as follows, “I devise a total of $25.00 to my husband, Tom Roberts, said sum to constitute his entire gift from my estate.” The will further directed, “My husband, Tom Roberts, shall not receive nor be entitled to any family allowance or personal property allowance from my estate as provided by state law.” In another provision of the will, she gave the remainder of her estate to her two children.

Mrs. Roberts died last month. At the time of her death her estate consisted of a house in which she and her husband had lived during their marriage and $175,000 in stocks. The house and stock were her separate property.

**Rule of Law**

Section 2253 of the state probate code provides as follows: “A decedent’s surviving spouse is entitled to a family allowance of forty thousand dollars ($40,000).… The family allowance is exempt from and has priority over all claims against the estate. Family allowance is in addition to any share passing to the surviving spouse … by intestate succession or by the decedent’s will, unless otherwise provided by the decedent in the will or other governing instrument.”

**Assignment**

Mrs. Roberts’s son Steve was appointed administrator of her estate. He claims that under section 2253 Tom Roberts is not entitled to receive anything from Mrs. Roberts’s estate other than the $25—that is, he is not entitled to the family allowance because of the language in the will. Tom Roberts claims that he is entitled to the $25 and the family allowance. The assignment is to determine whether Tom is entitled to the family allowance. In regard to the assignment, identify the key facts.

**PART V  CHAPTER SUMMARY**

The first step of the legal research and analysis process is preliminary preparation, which is gathering information about the case from the case file. This is accomplished by sifting through the file to identify key terms and key facts. **Key terms** are terms that help guide the researcher when performing research. **Key facts** are those facts in the case that are critical to the outcome of the case.

All lawsuits arise as a result of disputes involving facts. Our legal system revolves around resolving disputes through the application of rules of law to the facts of a case. Therefore, the two major components of the dispute-resolution process are the applicable law and the facts of the dispute. Each component deserves appropriate attention.

Some facts are more important than others, and the most important facts are the key facts—those facts upon which the outcome of the case depends. Key facts are those facts necessary to prove or disprove a claim. A key fact is so essential that if it were changed, the outcome of the case would be different. Key facts are an element of a legal issue, which is discussed in Chapter 3.
There are four recommended steps to follow when determining the key facts of a client’s case:

**Step 1:** Identify each cause of action possibly raised by the facts.

**Step 2:** Determine the elements of each cause of action identified in step 1.

**Step 3:** List all the facts possibly related to the elements of the causes of action identified in step 2.

**Step 4:** Determine which of the client’s facts apply to establish or satisfy the elements of each cause of action—the key facts.

There are three recommended steps for identifying the key facts in a court opinion:

**Step 1:** Read the entire case with the following general question in mind: “What was decided about which facts?”

**Step 2:** Look to the holding.

**Step 3:** Identify the facts necessary to the holding—the key facts.

These recommended steps are usually helpful in identifying the key facts. You may develop shortcuts or different methods as you become more proficient in analyzing a client’s case or a court opinion.