CHAPTER 4

Constitutions, Statutes, Administrative Law, and Court Rules—Research and Analysis

PART I  STUDY 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

A.  Number

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.
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. Other Provisions

- 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 will be reference information that may include:

- 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.
- 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, legal encyclopedia cites which discuss the section (Corpus Juris Secundum, American Jurisprudence Second, 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 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 51 categories called Titles. (Author’s note, the 51st title was added after publication of the text.) The United States Code is the “official” code of the laws of the United States. A publication of a code of laws is an official code when the government publishes the code itself or arranges for or directs a commercial publisher to publish the code.

2. United States Code Annotated

The United States Code Annotated (USCA) consists of approximately 200 volumes and includes a General Index.

a. General Index.

b. Pocket Parts and Supplementary Pamphlets.

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.

d. Conversion Tables. The conversion tables allow you to find where the law is classified in the USCA.

3. United States Code Service

The United States Code Service (USCS) consists of approximately 150 volumes and contains the wording of the federal statutes published in the United States Statutes at Large.

Similarities—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:

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.

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 Code**

The enactment and publication of state legislation varies in detail from state to state, but the publications 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 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.
- 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. Step 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. The General Index
   b. Title Table of Contents
   c. Popular Name citation

2. Step 2: Update Your Research

**D. Computer–Aided Research**

Computer-aided research will be discussed in detail in Chapters 9 and 10.

**E. Ethics—Competence and Diligence**

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 so on


2. Researching Federal Administrative Law

The following guides are helpful in researching the CFR.

a. Indexes and Table of Contents
b. Other Sources for Locating Rules and Regulations
c. Federal Register
d. Computer-Aided Research
e. Court and Administrative Decisions. Agency decisions may be available through the Government Printing Office and through commercial publishers, such as CCH and BNA. Administrative and court decisions can also be accessed through Westlaw and LexisNexis

B. State Administrative Law

The publication and research of state administrative law often follows that of federal administrative law in varying degrees. Most states have at least an administrative code similar to the CFR.

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. Local rules are 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.
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.

- 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.

A. Step 1: Determine if the Statute Applies

1. Part 1: Locate All Applicable Statutes
   Locate all statutes that possibly apply.

2. Part 2: Determine Which Statutes Apply
   Determine whether each statute applies by asking yourself, “Does the general area of law covered by this statute apply to the issue raised by the facts of my client’s case?”
   - 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.

   - Part 1: General concerns when reading statutory law
   - Part 2: Statutory elements—what does the statute specifically declare, require, or prohibit?
     1. Part 1: General Concerns
        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 canon of constructions when reading.

2. Part 2: 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

   A chart that lists the elements of the statute

2. Narrative Summary

   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. 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, 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. Ejusdem Generis

This term 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

This Latin phrase 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.
PART II    STUDY QUESTIONS

1. What is statutory law?
2. What is statutory analysis?
3. What are scope sections?
4. What are statutory annotations?
5. What are six types of statutory sections not included in the example in the text?
6. What are five types of reference information that may follow a section of a statute?
7. Where are statutory supplements located?
8. What is a slip law?
9. What are the names of the two commercial publications of the United States Code?
10. After you have defined your search as concisely as possible, what are the three main ways to approach locating a statute?
11. What do Rules 1.1 and 1.3 of the American Bar Association’s Model Rules of Professional Conduct provide?
12. What is administrative law?
13. Where are the Federal Rules of Civil and Criminal Procedure located?
14. What are local rules and what do they generally apply to?
15. What is the three-step approach recommended for analyzing a legal problem governed by statutory law?
16. What are the two formats that may be used to apply or match the facts of the client’s case to the elements of a statute?
17. What is legislative history?
18. What is the plain meaning rule?
19. What are some of the ways legislative history may be of assistance when interpreting a statute?
20. What are cannons of construction?

PART III    ASSIGNMENTS

ASSIGNMENT 1

What are the required elements of the following statute? 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 2

What are the required elements of the following statute? Criminal Code Section 18-5-1

Computer Crime. A person commits computer crime if the person knowingly:

a. Accesses a computer, computer network, or computer system or any part thereof without authorization or exceeds authorized access to a computer, computer network, or computer system or any part thereof; or
b. Accesses a computer, computer network, or computer system or any part thereof for the purpose of executing any scheme to defraud; or
c. Accesses a computer, computer network, or computer system or any part thereof to commit theft; or
d. Accesses a computer, computer network, or computer system or any part thereof to alter, damage, interrupt the proper functioning of any computer, computer network, or computer system.

ASSIGNMENT 3

What are the required elements of the following statutes? 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.

Section 18-8-102 Murder in the second degree. A person commits murder in the second degree if the person knowingly causes the death of a person.

ASSIGNMENT 4

Refer to the two murder statutes presented in Assignment 3. In the following fact situations which, if any, of the two murder statutes was violated? In your answer, match the facts with the elements of the statute to show how the statute applies. If neither statute applies, identify which element(s) is missing.

A. Taylor was a coach of the local high school football team. He was certain that one of the officials scheduled to referee the most important game of the season had been bribed to favor the opposing team. The night before the game Taylor sneak in to the referee’s house in the dead of night and clubbed him in the head while he was asleep. The referee did not die from the blow, but he died a month later from an infection caused by the blow.

B. Michelle and Caitlin decided to rob a local convenience store in order to get liquor. During the robbery Caitlin accidentally dropped the handgun she was carrying. The gun went off and killed a store employee. Is Michelle guilty of murder?
C. Hammill planned to kill the man who is dating Hammill’s former spouse. While following the man down a crowded street, Hammill pulled out his handgun. Just as he was about to fire he was jostled by another person. The gun went off and killed another passerby.

ASSIGNMENT 5

Refer to the computer crime statute presented in Assignment 2. In the following fact situation, was the computer crime statute violated? In your answer match the facts with the elements of the statute to show how the statute applies. Arlo, an 11-year-old was playing at his friend Jason’s house. They had been playing games on Jason’s computer all morning. They had just finished playing a game when Jason went to the kitchen to get something to eat. Jason said to Arlo, “Don’t touch anything while I’m gone.” Arlo got on the computer and started looking through some of Jason’s game files.

ASSIGNMENT 6

What does the federal Dyer Act apply to? What is the United State Code Annotated citation for the act? What is the penalty for violating the act?

ASSIGNMENT 7

The office you work in has the USCS. Your supervisory attorney asks you to find how long a copyright lasts, in general, for a work created in 1996. Use the USCS table of contents to find the answer. Include in your answer the USCS citation to the statute that applies.

PART IV WEB ASSIGNMENTS

ASSIGNMENT 1

Larry is a shareholder in a small corporation. He cannot attend the annual shareholders meeting. He wants to know whether he can vote at the meeting by proxy. Locate your state statute that answers Larry’s question.

ASSIGNMENT 2

Refer to either the USCA or the USCS and identify the federal law that requires the disclosure of the annual percentage rate charged for a loan.

ASSIGNMENT 3

Use the USCA to cite the title and section that addresses the Robert C. Byrd Honors Scholarship Program for colleges/universities.

ASSIGNMENT 4

The client is awaiting sentencing on two federal felony convictions. One conviction is for attempted bank robbery, and the other is for assault on a federal officer. Refer to the
USCA and determine whether there is any limitation on consecutive sentences for these offenses.

ASSIGNMENT 5
Statute

Colorado Revised Statutes § 15-11-502 provides:

(1) Except as provided in subsection (2) of this section … a will shall be:

(a) In writing;
(b) Signed by the testator, or in the testator’s name by some other individual in the testator’s conscious presence and by the testator’s direction; and
(c) Signed by at least two individuals either prior to or after the testator’s death, each of whom signed within a reasonable time after he or she witnessed, in the conscious presence of the testator, either the signing of the will as described in paragraph (b) of this subsection (1) or the testator’s acknowledgment of that signature or acknowledgment of the will.

(2) A will that does not comply with subsection (1) of this section is valid as a holographic will, whether or not witnessed, if the signature and material portions of the document are in the testator’s handwriting.

Questions
A. What type of wills does this statute apply to?
B. What is required for the witnessing of a will?
C. What is required for a holographic will to be valid?
D. Two days before she died, Joan wrote and signed her will. The next day she had two of her neighbors witness it.
   1. Is the will a valid will under subsection (1) of the statute? Why or why not? What additional information may be necessary?
   2. Is the will a valid will under subsection (2) of the statute? Why or why not? What additional information may be necessary?

ASSIGNMENT 6
Perform Assignment 5 using your state statute governing wills.

ASSIGNMENT 7
Statutes

- Criminal code section 18-732, Burglary. A person commits burglary if the person knowingly enters unlawfully, or remains unlawfully after a lawful or unlawful entry, in a building or occupied structure with intent to commit therein a crime against another person or property.
• Criminal code section 18-760, Robbery. A person who knowingly takes anything of value from the person or presence of another by use of force, threats, or intimidation commits robbery.

• Criminal code section 18-773, Larceny. Any person who wrongfully takes, obtains, or withholds, by any means, from the possession of the owner or of any other person any money, personal property, or article of value of any kind, with intent permanently to deprive another person of the use and benefit of property is guilty of larceny.

Questions
A. What are the required elements of each of the statutes?
B. Denise asks Larry to hold her shopping bag for a minute while she makes a phone call. When she looks away, Larry absconds with the shopping bag. Which, if any, of the statutes has Larry violated? Why?
C. Larry attempts to steal a woman’s handbag. He grabs it as he runs by. She refuses to let go, and a brief struggle ensues. Eventually she lets go of the bag, and Larry escapes with the bag. Which, if any, of the statutes has Larry violated? Why?
D. Mike has several drinks and runs up a tab at a local bar. At the end of the evening the bartender asks him to pay up. Mike refuses, threatens the bartender, and leaves. Which, if any, of the statutes has Mike violated? Why?
E. A family lives in an old school bus. Don, searching for something to eat, enters the bus while the family is away. He takes several cans of soup and two loaves of bread and then leaves. Which, if any, of the statutes has Don violated? Why?

PART V    CHAPTER SUMMARY

This chapter focused 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 is assuming 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 more frequently engage 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 CFR. 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 (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 and then deciding which ones apply to the facts raised by the legal problem.

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

The third step is 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, you should keep some considerations and guidelines in mind. Most of these come into play when the meaning of a statute is unclear or ambiguous. In addition to court opinions, which give guidance to the interpretation of a statute, you can consult legislative history and canons of construction. 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. There are exercises in the text at the end of the chapter that may be helpful in this regard.