

CHAPTER 2

INTRODUCTION TO LEGAL RESEARCH AND ANALYSIS

Lecture Plan/Chapter Outline

Instructor's Note: The purpose of this chapter is to provide students with an overview of legal analysis and the IRAC process. The assignments are designed to present students with problems that require them to apply the information and instructions presented in this chapter, that is, to conduct legal analysis and apply the steps of the IRAC process.

I. INTRODUCTION

Discuss the purpose of legal analysis and research.

The purpose of legal analysis and legal research is to analyze the factual event presented by the client and determine:

1. What legal issue (question) or issues are raised by the factual event
2. What law governs the legal issue
3. How the law that governs the legal issue applies to the factual event, including what, if any, legal remedy is available

II. LEGAL ANALYSIS DEFINED

Legal analysis is the process of identifying the issue or issues presented by a client's facts and determining what law applies and how it applies. Legal research is part of the legal analysis process. It is that part of the process that involves finding the law that applies to the legal question raised by the facts of a client's case.

III. LEGAL RESEARCH AND THE ANALYSIS PROCESS

A **legal analysis process** is a systematic approach to legal research and analysis that helps you develop research skills. It involves the commonly used four-step **legal analysis** process:

STEP 1: *Issue*. The identification of the issue (legal question) or issues raised by the facts of the client's case

STEP 2: *Rule*. The identification of the law that governs the issue

STEP 3: *Analysis/Application*. A determination of how the rule of law applies to the issue

STEP 4: *Conclusion*. A summary of the results of the legal analysis

An acronym commonly used in reference to the analytical process is **IRAC**. The use of the acronym is an easy way to remember the four-step legal analysis process—*issue*, *rule*, *analysis/application*, and *conclusion*. The research component of this process involves Steps 1 and 2. Steps 3 and 4 of the process involve the analysis of the research once the research is complete.

Before the legal analysis of a case can properly begin, the following preliminary preparation must take place:

1. All the facts and information relevant to the case should be gathered.
2. Preliminary legal research should be conducted to gain a basic familiarity with the area of law involved in the case.

A. Facts and Key Terms

1. Facts

The **facts** play a major role in each step of the analytical process:

1. ***Issue*.** The key facts are included in the issue.
2. ***Rule*.** The determination of which law governs the issue is based on the applicability of the law to the facts of the client's case.
3. ***Analysis/Application*.** The analysis/application step is the process of applying the rule of law to the facts.

4. **Conclusion.** The conclusion is a summation of how the law applies to the facts, a recap of the first three steps. It requires the facts.

Identify and review the facts at the outset.

1. Be sure you have all the facts.
2. Study the available facts to see if additional information should be gathered before legal analysis can properly begin.
3. Organize the facts. Group all related facts. Place the facts in a logical order, such as chronological order.
4. Weigh the facts.
5. Identify the key facts. Determine which facts appear to be critical to the outcome of the case.

2. Key Terms

Key terms or search terms help guide the researcher in the area being researched.

Key terms are identified by reviewing the case file and listing all the terms relevant to the legal questions raised by the facts of the case.

B. Preliminary Research

Before the analysis process can begin, it may be necessary to conduct basic research in the area(s) of law that govern the **issue** or issues in the case.

C. IRAC Analysis

Once the facts have been gathered and reviewed, follow the four steps of the IRAC legal analysis process:

1. Issue

Identify the issue(s) or legal question(s) raised by the facts of the client's case.

- a. **Multiple Issues.** The client's fact situation may raise multiple legal issues and involve many avenues of relief.
- b. **Separate the Issues.** Analyze and research each issue separately and thoroughly.

- c. Focus on the Issues of the Case. Keep your focus on the issues raised by the facts of the client's case or on those issues that you have been assigned to research.

2. Rule

Identify the law that governs the issue. Identify **the rule of law** that applies to the issue; that is, to solve the client's problem, find the law that applies to the problem.

Part 1: Locate the General Law That Governs the Issue.

- a. Enacted law. The legal issue may be governed by enacted law.
- b. Case law. The issue may be governed by rules or principles established by the courts.

Part 2: Locate the Law That Interprets How the General Law Applies to the Specific Fact Situation of the Issue. When looking for primary authority, always conduct counteranalysis. Also note important secondary authority that may be relied on by the court if there is no primary authority or if it is unclear how the primary authority applies.

Part 3: Update Research. When conducting research, follow a **research sequence**. First, locate the primary authority that governs the issue. Second, if there is no primary authority that applies or if additional authority is needed to help interpret the primary authority, then look to secondary authority.

3. Analysis/Application

Determine how the rule of law applies to the issue.

Part 1: Identify the component parts (elements) of the rule of law.

Part 2: Apply the elements of the law to facts of the client's case to the component parts (elements).

Part 3: Consider the possible counterarguments to the analysis of the issue; that is, conduct a counteranalysis of the analysis.

4. Conclusion

Summarize the results of the legal analysis. This may include the following:

- A recap of the determination reached in the analysis/application step

- Consideration or weighing, based on the analysis, of what action a court may take or how a court may rule upon the issue
- The identification of additional facts of information that may be necessary because of questions raised during analysis of the problem
- The identification of further research that may be necessary in regard to the issue
- The identification of further issues or concerns that became apparent as a result of research and analysis

IV. GENERAL CONSIDERATIONS

Discuss focus, intellectual honesty, and when to stop researching.

A. Focus

Focus means to concentrate on the specific task assigned. Analyze only the issue or issues assigned.

When identifying the issue, focus on the facts of the client's case. Ask yourself, "What must be decided about which of the facts of the client's case?"

When identifying the rule of law, focus on the facts of the case and the elements of the rule of law.

When analyzing and applying the rule of law in Step 3, focus on the client's facts and the issue or question being analyzed.

Focus on the work. Avoidance and procrastination are deadly.

B. Ethics—Intellectual Honesty

Rule 1.1 of the American Bar Association's Model Rules of Professional Conduct requires that a client be represented competently.

Intellectual honesty means to research and analyze a problem objectively. Pursue the analysis of all legal issues with intellectual honesty.

C. When to Stop Researching

1. When to Stop Researching If You Find Nothing

- a. Look to another source of law.
- b. Reconsider the issue and key/search terms.
- c. Reconsider the legal theory.
- d. Consider matters of first impression.

2. When to Stop Researching After Finding Several Legal Sources

- a. Stop when you have found the answer.
- b. Consider several authorities on the research topic:
 - Primary authority (constitutions, statutes, cases)
 - Secondary authority
- c. Consider other factors governing when to stop, such as time and economic factors.

Teaching Tips

First emphasize the importance of having a legal research and analysis process and following the steps of the process in the order in which they are presented—the process saves time, reduces error, and makes research and analysis easier. Next discuss each step in detail. The three general considerations (focus, intellectual honesty, and when to stop researching) are important and should be covered in class.

Suggested Assignments

1. For any of the legal memorandum assignments that you intend to assign in the course, require students to describe the use of the steps of the IRAC process in the analysis of the problem presented in the assignment.
2. Have students identify anything in their personal experiences that could affect their intellectual honesty; that is, any personal prejudices or life experiences that could influence their ability to analyze a problem objectively.

Text Assignments: Answers

ASSIGNMENT 1

The following are the four steps of the IRAC legal analysis process.

STEP 1: *Identify the issue* (the legal question) or issues raised by the facts of the client's case.

STEP 2: *Identify the law that governs the issue*. This may be enacted law, such as constitutional law or statutory law, or it may be common law or case law.

STEP 3: *Determine how the rule of law applies to the issue*. This consists of three parts:

Part I: Identify the component parts (elements) of the rule of law. Identify what the rule of law requires.

Part II: Apply the facts of the client's case to the component parts of the rule of law, and determine how the rule applies. Match the facts of the client's case to the rule of law to determine how the rule of law applies.

Part III: Consider the possible counterarguments to the analysis of the issue (conduct a counteranalysis of the analysis).

STEP 4: *Conclusion*. Summarize the results of the legal analysis.

ASSIGNMENT 2

STEP 1: *Identify the issue*. Under Section 30-236 of the state penal code, does forgery occur when an individual finds a check completely made out to cash, takes it to the bank, signs it on the back as instructed by the teller, and cashes it?

Instructor's Note: This is a complete statement of the issue as covered in Chapters 10 and 11; that is, it includes the rule of law and detailed facts. Without having covered those chapters, students may state the issue more broadly, such as, "Does forgery occur when an individual cashes a check that he or she found?"

STEP 2: *Identify the rule of law*. The law is state penal code Section 30-236 and state commercial code Section 45-3-109d.

STEP 3: *Determine how the rule of law applies to the issue*.

Part I: Identify the Component Parts (Elements) of the Rule of Law.

Section 30-236 of the state penal code requires three elements for forgery:

1. Falsely making or altering any signature, or any part of

2. any writing purporting to have any legal efficacy
3. with intent to injure or defraud.

Section 45-3-109d of the state commercial code states that a check, when made out to cash, is a bearer instrument. A bearer instrument is payable to anyone possessing the instrument and is negotiable by transfer alone—it is the same as cash.

Part II: Apply the Facts of the Client’s Case to the Component Parts.

The check was made out to cash and was completely filled out. According to Section 45-3-109d, such an instrument is a bearer instrument, negotiable by transfer alone, and is the same as cash. The client merely went to the bank and exchanged the check for cash. Section 30-236 requires that for forgery to occur, there must be a false making or altering of any signature or any part of the writing. In this case, the client did not falsely sign a name or alter any signature; he signed his name on the back as instructed. Therefore, he did not commit the crime of forgery.

Part III: Consider Possible Counterarguments to the Analysis of the Issue.

A possible counterargument is that the courts may interpret “false making” to include endorsements of bearer instruments by individuals who know they are not entitled to the money. A court may consider such signatures to be falsely made with the intent to defraud within the meaning of Section 30-236. Therefore, case law should be reviewed to address this possibility.

STEP 4: Conclusion. In summary, under Section 45-3-109d, the check that the client signed, like cash, was a bearer instrument negotiable by transfer alone. Section 30-236 requires that for forgery to occur, there must be a false making or altering of any signature or any part of the writing. In this case, the client did not falsely sign a name or alter any signature; he signed his name on the back as instructed. Therefore, he did not commit the crime of forgery. Case law should be reviewed to ensure that the courts have not interpreted “false making” to include an endorsement on the back of a check.

ASSIGNMENT 3

STEP 1: *Identify the issue.* Under Section 2397 of the state penal code, does a burglary occur when an individual enters a neighbor's garage by breaking a window, takes three cases of beer, and the garage is a separate building located about 6 feet from the dwelling? *Instructor's Note:* This is a complete statement of the issue as covered in Chapters 10 and 11; that is, it includes the rule of law and detailed facts. Without having covered those chapters, students may state the issue more broadly, such as, "Does a burglary occur when an individual breaks into a garage?"

STEP 2: *Identify the rule of law.* The law defining burglary is state penal code Section 2397. The case of *State v. Nelson* interprets the term *dwelling* to include "outbuildings close to, but not physically connected with, a dwelling house, if such buildings are capable of being fenced in."

STEP 3: *Determine how the rule of law applies to the issue.*

Part I: Identify the Component Parts (Elements) of the Rule of Law.

Section 2397 requires three elements for burglary:

1. Breaking and entering
2. a dwelling house of another
3. with the intent to commit a crime.

Part II: Apply the Facts of the Client's Case to the Component Parts.

The client's acts of breaking the window and entering the garage meet the first element. The garage belongs to another (a neighbor), and the court in *State v. Nelson* interpreted a dwelling to include an outbuilding close to the dwelling, if it is capable of being fenced in. The garage is probably capable of being fenced in, it is close to the house (6 feet from the house), and it belongs to another; therefore, the second element is probably met. The act of taking the beer evidences a probable intent to commit a crime when the client entered. Therefore, all the elements of the statute are met, and there is probably sufficient evidence to support a charge of burglary.

Part III: Consider Possible Counterarguments to the Analysis of the Issue.

Possible counterarguments may be raised based on the lack of facts. It is possible, but not likely, that the garage is not capable of being fenced in and, therefore, the fencing requirement stated in *State v. Nelson* may not be met and the garage is not a dwelling within the meaning of the statute. It is also possible that the client did not intend to take anything when he entered the garage—he may just have been trying to find a place to stay warm and sleep. His reason for breaking into the garage needs to be determined. Case law needs to be researched to determine if the entry “with the intent to commit a crime” requirement of the statute may be established by the conduct that takes place after entry.

STEP 4: Conclusion. Section 2397 of the state penal code defines *burglary* as “the breaking and entering of the dwelling house of another with the intent to commit a crime.” In the case of *State v. Nelson*, the court held that a dwelling house includes buildings close to the house, if they are capable of being fenced in. There probably is enough evidence to support charges of burglary. The client apparently entered the garage with the intent to steal beer, and the garage will probably be considered a dwelling within the meaning of the statute. The matters raised in the counterargument, however, need to be researched before a final conclusion can be reached.

ASSIGNMENT 4A

Prior to beginning the IRAC analytical process, gather all the information regarding the issue being addressed. Is the client’s case file complete? Are there any documents missing from the file? Are all the relevant information and facts assembled? If a review of the file reveals that additional information is necessary, the researcher should contact the appropriate party and obtain the information before beginning.

It may be necessary as a preliminary step to do some basic research in the area(s) of law that govern the issue or issues. This may require reference to a legal encyclopedia or

treatise, for example. Once the facts are gathered, the file complete, and a basic familiarity with the area of law acquired, the legal assistant should perform the four-step IRAC analytical process discussed in the chapter:

STEP 1: *Identify the issue or issues raised by the facts of the case.*

Instructor's Note: Identifying and stating the issue are discussed in detail in Chapters 10 and 11. The issue may be identified in general terms initially.

Did the library violate the group's First Amendment rights?

As more research is conducted, a complete statement of the issue in the context of the law and facts will be assembled.

In light of the provisions of the First Amendment, was the group's freedom of speech rights violated by the library's refusal to include the organization's literature among its materials, while accepting material from other groups such as the American Nazi Party? When the analysis involves more than one issue, each issue should be analyzed and researched separately. Each issue should be researched and analyzed completely before proceeding to the next issue. In addition, the researcher should stay focused on the issue(s) of the case or the issue(s) assigned and avoid the temptation to address interesting or related questions that may arise as research is conducted.

STEP 2: *For each issue, identify the rule of law that may govern or apply.* The rule of law may be enacted law (constitutional, legislative) or court-made law (case law).

For this assignment, it would be necessary to identify which constitutional rights or legislative acts (statutes) the library may have violated when it refused to accept the organization's literature.

This step should also include identifying all relevant case law that may be necessary to interpret the terms of the statute or act as guidance in the determination of how the law applies to the issue being addressed. Relevant case law would consist of cases that involve fact situations and issues similar to those being

addressed in the client's case wherein courts applied the same or a similar rule of law and that show how the law applies.

STEP 3: *Analyze the law and determine how the law applies to the issue.* This step involves three parts:

Part I: Identify the Elements of the Law.

For each rule of law that may govern the question, what must be established under the rule for the rule to apply? What are the elements of the law?

In this assignment, the library may have violated the group's freedom of speech rights. The researcher must identify the conditions or elements that must be established for a violation of freedom of speech to occur.

These elements must be identified to determine whether the library violated the group's freedom of speech rights.

Part II: Apply the Elements or Requirements of the Rule of Law to the Issue Being Addressed in the Client's Facts.

The elements or requirements of the rule of law must be applied to the facts of the client's case and a determination made about whether the library's refusal to accept the group's material violated the group's rights. If it is not clear from the rule of law how an element applies to the facts of the case, it may be necessary to refer to a court opinion that interprets the rule of law or provides guidance on how it applies in a fact situation similar to the client's case.

Part III: Identify and Explore Any Counterargument or Counteranalysis.

Any counterargument that the opposing side is likely to raise should be addressed. The library may argue that the group's literature advocates acts of violence and is so inflammatory that it is similar to yelling "Fire!" in a crowded theater. Such literature is not protected by the freedom of speech provisions of the U.S. Constitution.

STEP 4: *The final step is the conclusion summarizing the results of the analytical process.* The conclusion should include a summary of the law and analysis presented

in the previous steps and a consideration of what action a court may take or how it may rule upon the issue. The conclusion may also include the identification of:

1. Additional factual information that may be needed
2. Further research that may be required
3. Related issues or concerns

ASSIGNMENT 4B

The steps discussed in the answer to Assignment 4A apply to each issue identified in this assignment.

STEP 1 requires the identification of each issue. In this assignment, two possible causes of action are identified, one involving freedom of speech under the First Amendment and another involving equal protection under the Fourteenth Amendment. Each issue should be stated as specifically as possible in the context of the facts. See Chapters 9 and 10.

Was the group's freedom of speech rights violated by the library's refusal to accept the group's literature?

A final complete statement of the issue may not be possible until research and analysis are conducted. Once the issues are identified as specifically as possible, the analysis steps should be separately followed for each issue.

One issue, such as the freedom of speech issue, should be analyzed completely. Steps 2, 3, and 4 should be followed in regard to that issue. The analysis of the freedom of speech issue should be entirely completed before the equal protection issue is addressed. Once the analysis of the first issue is complete, Steps 2, 3, and 4 should be followed in regard to the second issue.

In outline form, the process for analyzing the two issues presented in this assignment should appear as follows:

STEP 1: Identify each issue as completely as possible. Select one of the issues, and follow the remaining steps of the analytical process for that issue. Assume that the freedom of speech issue is selected first.

STEP 2: Identify the specific rule of law concerning freedom of speech that applies to the question of a library's refusal to accept a group's material.

STEP 3: Determine how the rule of law applies to the freedom of speech issue.

Part I: Identify the component parts (elements) of the applicable freedom of speech rule of law.

Part II: Apply the facts of the case to the elements of the rule of law.

Part III: Consider and address the possible counterarguments.

STEP 4: Prepare a conclusion: a recap of the analysis, a consideration of what action a court may take, and any recommendations.

Once Step 4 is completed for the freedom of speech issue, then Steps 2, 3, and 4 should be followed for the equal protection issue.

ASSIGNMENT 4C

The primary factors that may affect a researcher's objectivity are the preconceived notions, personal views, and emotional feelings that the researcher may have toward the client or toward the extremist group of which the client is president. If the researcher is a follower of Islam and possibly has been subjected to anti-Islamic abuse, for example, or to any prejudice in general, the researcher may be repulsed by what the group represents. Therefore, it may be very difficult for the researcher to approach the analysis of the legal issues objectively.

This can result in a failure to conduct an objective, critical analysis of the issues. The researcher may focus on the part of the research that indicates that freedom of speech and equal protection do not afford the client's group a remedy in this situation. The researcher may focus on the body of case law that indicates that the group's rights were not violated. The researcher may therefore not conduct an objective analysis and fail to give equal credence to or vigorously pursue the line of authority that indicates that the group's freedom of speech and equal protection rights were violated.

If the researcher is a supporter of the group or its philosophy, then the opposite of the above may occur. The researcher may fail to vigorously pursue or consider the line of

authority indicating that the group is not protected under the rights of freedom of speech or equal protection.

In both instances, the ability to objectively research and analyze the issues is compromised by the nature of the case and the personal views of the researcher. This can produce an incomplete analysis of the issues and the applicable law and can result in an erroneous conclusion.

ASSIGNMENT 5A

The preliminary stages of this assignment, and of all assignments involving the legal analysis of issues in a client's case, are the same as those discussed in Assignment 4A. That is, prior to beginning the IRAC analytical process, the researcher should gather all the information regarding the issue being addressed. Is the client's case file complete? Are there any documents missing from the file? Are all the relevant information and facts assembled? If a review of the file reveals that additional information is necessary, the researcher should contact the appropriate party and obtain the information before beginning.

It may also be necessary as a preliminary step to do basic research in the area(s) of law that govern the issue or issues. This may require reference to a legal encyclopedia or treatise, for example. Once the facts are gathered, the file complete, and a basic familiarity with the area of law acquired, the legal assistant should perform the four-step IRAC analytical process discussed in the chapter:

STEP 1: *Identify the issue or issues raised by the facts of the case.* The issue initially may be stated broadly, such as, "Did the client violate the state motor vehicle laws when he passed in a no-passing zone?" As the applicable law is identified and further research and analysis are conducted, the issue should be identified more precisely in the context of the law and facts.

Under the section of the state's motor vehicle code governing passing, Section 293-301, is the statute violated when an individual begins and ends a passing maneuver entirely in a no-passing zone, there is no oncoming traffic, and the maneuver is safely made?

STEP 2: Identify the rule of law that governs the issue. After identifying the issue, the researcher should locate the law that governs the issue. In this case, Section 293-301 of the state motor vehicle code governs the question of passing maneuvers and no-passing zones. Thorough research should be conducted to ensure that there are no additional applicable statutory sections.

This step should also include identifying all relevant case law that may be necessary to interpret the terms of the statute or to act as guidance in the determination of how the law applies to the issue being addressed. Relevant case law would consist of cases that involve factual situations and issues similar to those being addressed in the client's case wherein the courts applied the same or a similar rule of law and that show how the law applies. In this assignment, the relevant case on the subject, *State v. Roth*, would be identified in Step 2.

STEP 3: Analyze the law and determine how the law applies to the issue. As discussed in Assignments 4A and 4B, this step involves a three-part process of analyzing and applying the law that governs the issue.

Part I: Identify the Elements of the Law.

This part requires the researcher to identify the elements of Section 293-301 of the motor vehicle code, which must be met for the section to apply. What are the elements of the section? The components or elements of Section 293-301 are easy to identify. The statute is violated when:

1. There is a passing maneuver
2. in a no-passing zone (defined as that portion of the road marked by two solid lines painted in the center of the road).

Part II: Apply the Elements or Requirements of the Rule of Law to the Issue Being Addressed (to the Client's Facts).

The elements or requirements of the rule of law must be applied to the facts of the client's case and a determination made whether the actions of the client violated the statute. It appears, from a literal reading of the relevant section of the state's motor vehicle code, that the client clearly violated the statute. The client:

1. Admittedly performed a passing maneuver
2. in a no-passing zone; that is, the maneuver began and ended in a portion of the road marked by two solid lines painted in the center of the road.

Part III: Identify and Explore Any Counterargument or Counteranalysis.

A possible counterargument that could be made to the analysis (albeit a weak one) is that a strict application of the statute is not appropriate since there were no oncoming vehicles and the passing maneuver was safely made.

Support of this counterargument could be based on the *State v. Roth* decision. In that case, the court ruled that a strict reading of the statute was not appropriate when the maneuver was safely made and the no-passing zone was not properly marked. That opinion, however, is probably not applicable because it is not on point. There are critical differences between the facts of *Roth* and the client's case.

In *Roth*, the passing maneuver began at the end of a no-passing zone that should have been marked as a passing zone. The pass was completed in a passing zone. In effect, the maneuver began and ended in a zone that should have been marked as a passing zone. In the client's case, the entire passing maneuver took place in a no-passing zone. There are no facts indicating that the no-passing zone was improperly marked.

It would be an absurd reading of *Roth* to argue that the opinion allows the avoidance of the clear application of the statute whenever a passing maneuver is safely made entirely within a no-passing zone. If that were the intent of the legislature, Section 293-301 would contain a provision excepting from the application of the section passes safely made in no-passing zones.

STEP 4: *The final step is the conclusion summarizing the results of the analytical process.* The conclusion should include a summary of the law and analysis presented in the previous steps and a consideration of what action a court may take or how it may rule upon the issue. The conclusion may also include the identification of the following:

1. Additional factual information that may be needed; in this case, whether the passing zone was properly marked
2. Further research that may be required; in this case, whether there are additional court opinions involving passing maneuvers in no-passing zones
3. Related issues or concerns

Section 293-301 of the state's motor vehicle code prohibits passing in a no-passing zone. In this case, the client's passing maneuver was entirely conducted in a no-passing zone. Unless the no-passing zone was improperly marked, as in the *Roth* case, it seems clear that the client's ticket will not be set aside. It is recommended that an investigation be conducted to determine whether the passing zone was improperly marked. Also, it may be advisable to conduct further research to determine whether there are additional cases addressing this issue.

ASSIGNMENT 5B

The preliminary stages (gathering the facts, reviewing the case file, and so forth) and the four steps of the analytical process are the same in this assignment as in Assignment 5A. Presented below is a comparison between the performance of the steps of the analytical process in Assignment 5A and this assignment.

STEP 1: *Identify the issue or issues raised by the facts of the case.* The approach to identifying the issue in this assignment is the same as in Assignment 5A. The difference is that the final statement of the issue is different because the key facts are somewhat different. In this assignment, the passing maneuver did not begin and end in the no-passing zone; the passing maneuver began approximately 20 feet from the end of the no-passing zone and was completed in a passing zone.

Under the section of the motor vehicle code governing passing, 293-301, is the statute violated when an individual begins a passing maneuver approximately 20 feet from the end of the no-passing zone and completes it in a passing zone, there is no oncoming traffic, and the maneuver is safely made?

STEP 2: Identify the rule of law that governs the issue. The performance of Step 2 is the same for this assignment as it is for Assignment 5A. Refer to the answer presented in Assignment 5A, Step 2.

STEP 3: Analyze the law and determine how the law applies to the issue. Part I of this step is the same for this assignments as it is for Assignment 5A; the major differences in the assignments are in Parts II and III, which are noted below.

Part I: Identify the Elements of the Law.

As noted above, the performance of this part of Step 3 is the same as Part I in Assignment 5A. Refer to the answer presented in Assignment 5A, Step 3, Part I.

Part II: Apply the Elements or Requirements of the Rule of Law to the Issue Being Addressed (to the Client's Facts)

The elements or requirements of the rule of law must be applied to the facts of the client's case and a determination made whether the actions of the client violated the statute.

The performance of Part II is different in this assignment from that in Assignment 5A. In this assignment, it is unclear, based on the statutory and case law, whether the passing maneuver violated the law. An argument can be made either way. The statute provides that it is a violation of Section 293-301 to pass a vehicle in a no-passing zone; however, neither the section nor the relevant court decision, the *Roth* case, defines what constitutes passing a vehicle in a no-passing zone. Is the statute violated only if the passing maneuver begins and ends in the no-passing zone or is the statute also violated if the maneuver merely begins in the no-passing zone but does not end in the no-passing zone?

Neither the statute nor *Roth* addresses these questions. In *Roth*, the court stated that the purpose of the statute is to ensure safety on the public highways. The court ruled that a strict reading of the statute was not

appropriate when the maneuver was safely made and the no-passing zone was not properly marked.

In *Roth*, the passing maneuver began in the last 30 feet of the no-passing zone, there was no oncoming traffic, and the maneuver was safely completed. The client's case is almost identical to *Roth*: The passing maneuver began in the last 30 feet of the passing zone, there was no oncoming traffic, and the maneuver was safely made. It could be argued that since the cases are almost identical, a strict reading of the statute is not appropriate and the statute should not apply, just as it did not apply in *Roth*. In the client's case, as in *Roth*, the purpose of ensuring safety on the public highways is not furthered by a strict reading of the statute.

A strong counterargument to this analysis is presented in Part III, below. Without a determination of what constitutes passing a vehicle in a no-passing zone within the meaning of Section 293-301, it is unclear how a court may rule or which position will prevail.

Part III: Identify and Explore Any Counterargument or Counteranalysis.

Any counterargument the opposing side is likely to raise should be addressed. A strong counterargument could be made that the *Roth* case does not apply, Section 293-301 should be strictly applied, and a passing maneuver that in any way begins in a no-passing zone violates the section.

In the *Roth* case, the court ruled that a strict reading of the statute was not appropriate when the maneuver was safely made and the no-passing zone was not properly marked. That opinion, however, is probably not applicable because it is not on point. There is a critical difference between the facts of *Roth* and the client's case.

In *Roth*, the passing maneuver began at the end of a no-passing zone that should have been marked as a passing zone. The pass was completed in a passing zone. In effect, the maneuver began and ended in a zone that should have been marked as a passing zone. In the client's case, there are no facts indicating that the

no-passing zone was improperly marked; therefore, the passing maneuver did not in effect begin in a passing zone and the case is not on point.

A determination of which analysis, the one presented in Part II or Part III, would most likely be adopted by a court cannot be made without an interpretation of what constitutes passing a vehicle in a no-passing zone. Further research needs to be conducted to determine whether a court will allow a less-strict interpretation and application of the relevant section of the motor vehicle code only in situations in which there is an error in marking the road, as occurred in *Roth*. Cases involving the improper marking of road signs or speed limits may provide guidance.

STEP 4: *The final step is the conclusion summarizing the results of the analytical process.* The conclusion should include a summary of the law and analysis presented in the previous steps and a consideration of what action a court may take or how it may rule upon the issue. The conclusion may also include the identification of the following:

1. Additional factual information that may be needed; in this case, whether the no-passing zone was properly marked
2. Further research that may be required; in this case, whether there are additional cases involving passing maneuvers in a no-passing zone or cases involving improperly marked roads, such as cases involving signs or speed limits
3. Related issues or concerns

Section 293-301 of the motor vehicle code prohibits passing in a no-passing zone. Neither the section nor the case law defines what constitutes passing in a no-passing zone. It could be argued that the section should not apply because the facts of the client's case are almost identical to the *Roth* case, and the statute was not applied in *Roth*. It can also be argued that *Roth* does not apply because in *Roth*, the no-passing zone was improperly marked, and in the client's case, there is no indication that it was improperly marked.

A determination of which argument would most likely be adopted by a court cannot be made without an interpretation of what constitutes passing a vehicle in a no-passing zone. Further research needs to be conducted to determine whether a court will allow a less-strict interpretation and application of the motor vehicle code only in situations in which there is an error in marking the road, as occurred in *Roth*.

It is recommended that research be conducted to determine whether the passing zone was improperly marked. Cases involving the improper marking of road signs or speed limits may provide guidance. It may be advisable to conduct further research to locate such cases or to determine if there are additional cases concerning this issue.

ASSIGNMENT 5C

The preliminary stages (gathering the facts, reviewing the case file, and so forth) and the four steps of the analytical process are the same in this assignment as in Assignment 5A. Presented below is a comparison between the performance of the steps of the analytical process in Assignment 5A and this assignment. Also, the answer to this assignment is very similar in part to Assignment 5B, but with certain differences.

STEP 1: *Identify the issue or issues raised by the facts of the case.* The approach to identifying the issue in this assignment is the same as in Assignment 5A. The difference is in the final statement of the issue because the key facts are somewhat different. In this assignment, the passing maneuver did not begin and end in a no-passing zone; the passing maneuver began in a passing zone and was completed in a no-passing zone.

Under the section of the motor vehicle code governing passing, Section 293-301, is the statute violated when an individual begins a passing maneuver in a passing zone and completes it in a no-passing zone, there is no oncoming traffic, and the maneuver is safely made?

STEP 2: Identify the rule of law that governs the issue. The performance of Step 2 is the same for this assignment as it is for Assignment 5A. Refer to the answer presented in Assignment 5A, Step 2.

STEP 3: Analyze the law and determine how the law applies to the issue. Part I of this step is the same for both assignments; the major differences are between Parts II and III, which are noted below.

Part I: Identify the Elements of the Law.

The performance of this part of Step 3 is the same as Part I in Assignment 5A.

Refer to the answer presented in Assignment 5A, Step 3, Part I.

Part II: Apply the Elements or Requirements of the Rule of Law to the Issue Being Addressed (to the Client's Facts).

The elements or requirements of the rule of law must be applied to the facts of the client's case and a determination made whether the actions of the client violated the statute.

The performance of Part II is different in this assignment from that in Assignment 5A. In this assignment, just as in Assignment 5B, it is unclear, based on the statutory and case law, whether the passing maneuver violates the law. An argument can be made either way. The statute provides that it is a violation of Section 293-301 to pass a vehicle in a no-passing zone; however, neither the section nor the relevant court decision, the *Roth* case, defines what constitutes passing a vehicle in a no-passing zone. Is the statute violated only if the passing maneuver begins and ends in a no-passing zone or is the statute also violated if the maneuver begins in a passing zone and ends in a no-passing zone?

Neither the statute nor *Roth* addresses these questions. The court in *Roth* stated that the purpose of the statute is to ensure safety on the public highways. The court ruled that a strict reading of the statute was not appropriate when the maneuver was safely made and the no-passing zone was not properly marked.

In the *Roth* case, the passing maneuver began in the last 30 feet of the no-

passing zone, there was no oncoming traffic, and the maneuver was safely completed. The client's case is somewhat similar to *Roth*: The passing was safely made and there was no oncoming traffic. It could be argued that because the cases are similar, a strict reading of the statute is not appropriate and the statute should not apply, just as it did not apply in *Roth*. In the client's case, as in *Roth*, the purpose of ensuring safety on the public highways is not furthered by a strict reading of the statute.

A strong counterargument to this analysis is presented in Part III, below. Without a determination of what constitutes passing a vehicle in a no-passing zone within the meaning of Section 293-301, it is unclear how a court may rule and which position will prevail.

Part III: Identify and Explore Any Counterargument or Counteranalysis.

Any counterargument the opposing side is likely to raise should be addressed. A strong counterargument could be made that the *Roth* case does not apply, Section 293-301 should be strictly applied, and a passing maneuver that in any way takes place in a no-passing zone violates the section.

In *Roth*, the court ruled that a strict reading of the statute was not appropriate when the maneuver was safely made and the no-passing zone was not properly marked. The opinion, however, is probably not applicable because it is not on point. There is a critical difference between the facts of *Roth* and the client's case. In *Roth*, the passing maneuver began at the end of a no-passing zone that should have been marked as a passing zone and ended in a passing zone. In effect, the maneuver began and ended in a zone that should have been marked a passing zone.

In the client's case, the pass was completed in a no-passing zone. There are no facts indicating that the no-passing zone was improperly marked; therefore, the passing maneuver did not, in effect, end in a passing zone as it did in *Roth*, and the case is not on point.

A determination of which analysis, the one presented in Part II or Part III, would most likely be adopted by a court cannot be made without an interpretation of what constitutes passing a vehicle in a no-passing zone. Further research needs to be conducted to determine whether a court would allow a less-strict interpretation and application of the motor vehicle code only in situations in which there is an error in marking the road, as occurred in *Roth*. Cases involving the improper marking of road signs or speed limits may provide guidance.

STEP 4: *The final step is the conclusion summarizing the results of the analytical process.* The conclusion should include a summary of the law and analysis presented in the previous steps and a consideration of what action a court may take or how it may rule upon the issue. The conclusion may also include the identification of the following:

1. Additional factual information that may be needed; in this case, whether the no-passing zone was properly marked
2. Further research that may be required; in this case, whether there are additional cases involving passing maneuvers in no-passing zones
3. Related issues or concerns; none noted here

ASSIGNMENT 5D

ASSIGNMENT 5A. There is probably sufficient information presented in the assignment for a complete analysis of the problem. It is always helpful, however, to have additional cases, and additional research would be advisable. A necessary fact, in light of the *Roth* decision, is whether the no-passing zone was properly marked.

ASSIGNMENT 5B. The additional factual information that may be needed in this assignment is whether the no-passing zone where the passing maneuver was initiated was properly marked. Further research may be required to identify whether there are additional cases involving passing maneuvers in no-passing zones or cases involving improperly marked roads, such as cases involving signs or speed limits.

ASSIGNMENT 5C. Additional factual information that may be needed in this assignment is whether the no-passing zone where the passing maneuver ended was properly marked. The same additional case law research discussed in Assignment 5B would be required.

ASSIGNMENT 6

When your research of a specific source produces no results, you should take the following approaches:

1. **Look to another source of law.** Once you have conducted research using all the possible terms that the statute may be categorized under, it is time to look to another source, such as case law.
2. **Reconsider the issue and search terms.** It may be possible that the issue or search terms are stated so broadly or narrowly that you are not finding any results. If so, it may be necessary to consult the person who gave you the assignment for guidance or to make sure the assignment is clear. In addition, reference to a secondary source such as a treatise may help you reframe the issue or identify additional search terms.
3. **Reconsider the legal theory.** It may be that you have incorrectly analyzed the question and are searching in the wrong area of law. Review the question to see if another area of law may be involved. It may be necessary to consult a secondary source such as a legal encyclopedia for an overview of the law that compiles all the ways a topic may be addressed.
4. **Matters of first impression.** It may be that the issue you are researching has not been addressed in your state. If this is the case, refer to a secondary source such as a legal encyclopedia, treatise, or *ALR* annotation to identify how other jurisdictions have answered the question. The results of your research should not simply inform the supervising attorney that the state has not decided the matter. It should include the various ways other states have addressed the question.

Keep the following considerations in mind concerning when to stop researching after finding several legal sources that address the research topic.

- **Stop when you have found the answer.** The first research step is to find the primary authority that answers the question. If the authority clearly answers the question, then stop researching.

There may be case law directly on point that answers the question being researched. If this is the situation, then you must Shepardize the case to determine if it is good law and identify any cases that may criticize or affect its application. In addition, check the appropriate digest for other cases that may analyze the issue differently. Also, check a secondary source such as an *ALR* annotation on the topic for authority that may provide a different analysis. Include any cases that are on point in the research.

- **You locate several authorities on the research topic.** Keep the following factors in mind if you locate several authorities that address the research issue:
 1. **Primary Authority** (constitutions, statutes, cases). Always try to find a mandatory primary authority source or sources for each issue. If you have several cases that address the topic, use the mandatory authority cases. If you have case law that is mandatory authority, you do not need persuasive authority, such as cases from other jurisdictions. If you have several mandatory authority cases, select the case that is most on point, that which most clearly analyzes the law and is most recent.
 2. **Secondary Authority.** You do not need to include secondary sources in your research if the primary authority clearly provides the answer to the issue. If there is no primary authority on a topic, then reference to secondary authority is necessary. The more specific the secondary authority source is, the better.

MindTap Supplementary Exercises: Answers

ASSIGNMENT 1

The term *focus* means to keep the mind concentrated on the specific task assigned and not be sidetracked by other issues that may be raised by the facts of the case. Focus is important to

the analytical process because a lack of focus may cause a researcher to get sidetracked on other issues and waste time researching and analyzing matters beyond the assignment at hand.

The term *intellectual honesty* means to research and analyze a problem objectively, to not let emotions, personal views, or preconceived notions interfere with an objective analysis of the client's case. Intellectual honesty is important because if personal views, prejudices, and so on become part of the analysis, they may lead to a failure to conduct an objective, critical analysis of the case. The researcher may not vigorously pursue potential opposing arguments or may discount opposing authority.

ASSIGNMENT 2A

STEP 1: Identify the issue. Under Section 24-457B of the state probate code, is a will revoked when the notation, "I hereby revoke this will and declare it to be void," (signed) is handwritten diagonally across the first paragraph of the will?

Instructor's Note: This is a complete statement of the issue as covered in Chapters 10 and 11; that is, it includes the rule of law and detailed facts. Without having covered those chapters, students may state the issue more broadly, such as, "Is the will validly revoked by a notation across the first paragraph?"

STEP 2: Identify the rule of law. The law governing revocation of wills is Section 24-457B of the state probate code. In the case of *Terrance v. Real*, the court interpreted the phrase "placed on the will or codicil" to require that the revocation language be so placed as to physically affect written words of the will.

STEP 3: Determine how the rule of law applies to the issue.

Part I: Identify the Component Parts (Elements) of the Rule of Law.

Under Section 24-457B, the following elements must be present for a will to be revoked:

1. A writing,
2. declaring an intention to revoke the will,
3. placed on the will or codicil,
4. and signed by the testator

Part II: Apply the Facts of the Client’s Case to the Component Parts.

The writing requirement appears to be met: there is a handwritten notation and the statute does not require the writing to be typed. The second element appears to be met; the language, “I hereby revoke this will and declare it to be void,” clearly evidences an intent to revoke the will. The third element appears to be met: the notation is placed on the will. The case of *Terrance v. Real* requires that the revocation language must be placed to physically affect written words of the will. In this case, the notation is written diagonally across the first paragraph of the will, where it clearly affects the will’s written words. The final element is met; the testator signed it.

Part III: Consider Possible Counterarguments to the Analysis of the Issue.

The only possible counterargument is that the will must be typewritten. In this case, it was handwritten. The statute is silent on the question of whether the notation may be handwritten; therefore, case law should be referred to.

STEP 4: Conclusion. Section 24-457B of the state probate code provides that revocation language placed on a will and signed by the testator is sufficient to revoke a will. The case of *Terrance v. Real* requires that the revocation language must be placed to physically affect written words of the will. In this case, there was revocation language, written across the first paragraph of the will, and signed by the testator. All of the elements of the statute are met and the revocation appears to be valid under state law.

ASSIGNMENT 2B

STEP 1: Identify the issue. Under Section 24-457B of the state probate code, is a will revoked when handwritten in the margins of the first page of the will is the notation, “I hereby revoke this will and declare it to be void,” and the notation is signed by the deceased?

Instructor’s Note: This is a complete statement of the issue as covered in Chapters 10 and 11; that is, it includes the rule of law and detailed facts. Without having covered

those chapters, students may state the issue more broadly, such as, “Is the will validly revoked by a notation in the margins of the first page of the will?”

STEP 2: Identify the rule of law. The law governing revocation of wills is Section 24-457B of the state probate code. In the case of *Terrance v. Real*, the court interpreted the phrase “placed on the will or codicil” to require that the revocation language be so placed as to “physically affect written words of the will.”

STEP 3: Determine how the rule of law applies to the issue.

Part I: Identify the Component Parts (Elements) of the Rule of Law.

The relevant portions of Section 24-457B provide that the following elements must be present for a will to be revoked:

1. A writing,
2. declaring an intention to revoke the will,
3. placed on the will or codicil,
4. and signed by the testator

Part II: Apply the Facts of the Client’s Case to the Component Parts.

The writing requirement appears to be met: there is a handwritten notation and the statute does not require the writing to be typed. The second element appears to be met: the language, “I hereby revoke this will and declare it to be void,” clearly evidences intent to revoke the will. The third element does not appear to be met. The case of *Terrance v. Real* requires that the revocation language be placed to physically affect written words of the will. In this case, the notation is written in the margins of the first paragraph of the will, where it does not affect the written words. The final element is met: the testator signed it.

Part III: Consider Possible Counterarguments to the Analysis of the Issue.

The only possible counterargument would be to study the revocation language to see if any of it is placed on written words of the will.

STEP 4: Conclusion. Section 24-457B of the state probate code provides that revocation language placed on a will and signed by the testator is sufficient to revoke

a will. The case of *Terrance v. Real* requires that the revocation language be placed to physically affect written words of the will. In this case, there was revocation language, but it appears in the margins of the will, so it does not physically affect the will's written words. The third element is not met; therefore, the revocation is not valid.

ASSIGNMENT 2C

STEP 1: Identify the issue. Under Section 24-457B of the state probate code, is a disposition to an individual in a will revoked when handwritten diagonally across the first paragraph of the will is the following notation to the individual, "I hereby revoke and declare void all dispositions," and the notation is signed by the deceased?

Instructor's Note: This is a complete statement of the issue as covered in Chapters 10 and 11; that is, it includes the rule of law and detailed facts. Without having covered those chapters, students may state the issue more broadly, such as, "Are the dispositions to the brother validly revoked by a notation across the first paragraph?"

STEP 2: Identify the rule of law. The law governing revocation of wills is Section 24-457B of the state probate code. In the case of *Terrance v. Real*, the court interpreted the phrase "placed on the will or codicil" to require that the revocation language be so placed as to "physically affect written words of the will."

STEP 3: Determine how the rule of law applies to the issue.

Part I: Identify the Component Parts (Elements) of the Rule of Law.

The relevant portions of Section 24-457B provide that the following elements must be present for a will to be revoked:

1. A writing,
2. declaring an intention to revoke the will,
3. placed on the will or codicil,
4. and signed by the testator

Part II: Apply the Facts of the Client's Case to the Component Parts.

The key to this problem is whether the statute allows partial revocation. The statute reads "A will may be revoked"; it does not read "A disposition within a will may be revoked." The statute does not appear to apply to partial

revocation, although that may be the case. Before this question may be answered, research into case law must be conducted to determine if the courts have interpreted the statute to allow partial revocations. If so, then the analysis is similar to the analysis for Assignment 2A. It follows the writing requirement appears to be met; there is a handwritten notation and the statute does not require the writing to be typed. The second element appears to be met: the language, “I hereby revoke and declare void all dispositions to my brother Tom Harbin,” clearly evidences intent to revoke the dispositions to Mr. Harbin. The third element appears to be met; the case of *Terrance v. Real* requires that the revocation language be placed to physically affect written words of the will. In this case, the notation is written diagonally across the first paragraph of the will, where it affects the written words. The final element is also met; the testator signed it.

Part III: Consider Possible Counterarguments to the Analysis of the Issue.

In addition to the counterargument mentioned in Part II, the only other possible counterargument would be that it must be typewritten. In this case, it was handwritten. The statute is silent on the question of whether the notation may be handwritten; therefore, case law should be referred to.

STEP 4: Conclusion. Section 24-457B of the state probate code provides that revocation language placed on a will and signed by the testator is sufficient to revoke a will. The case of *Terrance v. Real* requires that the revocation language must be placed to physically affect written words of the will. In this case, there was revocation of only a disposition within the will. The entire will was not revoked. If the statute allows partial revocation, then the disposition was revoked: There was revocation language, written across the first paragraph of the will, and signed by the testator. All of the elements of the statute are met and the revocation would appear to be valid under state law. Research must be conducted to determine if the statute allows partial revocation.

ASSIGNMENT 3A

STEP 1: Identify the issue. In light of the provisions of Section 21-2-314 of the state commercial code, is there an implied warranty of merchantability for a toaster sold at a flea market booth that sells small appliances and is always open at the same location at the market?

Instructor's Note: As with the other assignments, this is a complete statement of the issue(s) as covered in Chapters 10 and 11; that is, it includes the rule of law and detailed facts. Without having covered those chapters, student may state the issue more broadly, such as, "Is there a warranty of merchantability for goods sold at a flea market?"

STEP 2: Identify the rule of law. The laws governing the sale of goods are Sections 21-2-314 and 21-1-101 of the state commercial code. Case law—*Dinelle v. Eldson*—verifies that a court held that a flea market seller can be considered a merchant, within the meaning of the commercial code, if the seller sells the same products at the flea market on a continuous basis.

STEP 3: Determine how the rule of law applies to the issue.

Part I: Identify the Component Parts (Elements) of the Rule of Law.

According to Section 21-2-314, for an implied warranty of merchantability to exist for the sale of goods, the following elements must be present:

1. Sale
2. of goods
3. by a merchant with respect to goods of that kind

According to Section 21-1-101, a merchant is "one who routinely is engaged in the purchase and sale of the kind of goods involved in the sales contract."

Part II: Apply the Facts of the Client's Case to the Component Parts.

The first element is met because the transaction at the flea market was a sale. The second element is met because the sale was a sale of goods: the toaster. The third element also appears to be met. Section 21-1-101 defines a merchant as "one who routinely is engaged in the purchase and sale of the kinds of goods involved in the

sales contract.” According to the facts, small appliances are sold at the booth and it is always open at the same location at the flea market. Thus, the seller appears to be routinely engaged in the purchase and sale of the kinds of goods involved. In addition, the court in *Dinelle v. Eldson* held that individuals who sell the same products at a flea market on a continuous basis can be considered merchants within the meaning of the commercial code. Since all three of the requirements of Section 21-2-314 appear to be met, it can be concluded that an implied warranty of merchantability exists for the sale of the goods. Since the toaster worked for only two days, it probably is not merchantable and, under Section 21-2-314, the seller must replace the goods or return the purchase price.

Part III: Consider Possible Counterarguments to the Analysis of the Issue.

Possible counterarguments may be made based on missing facts. The seller sells small appliances, but does the seller routinely sell toasters? If the seller only occasionally sells toasters, then the seller may not be a merchant under Section 21-1-101 because the seller is not routinely engaged “in the sale of the kind of goods involved in the sales contract.” Another missing fact that may give rise to a counterargument is how the client used the toaster. If the client abused the toaster and caused it to fail, then the toaster’s failure may not be a result of its lack of merchantability.

STEP 4: Conclusion. Section 21-2-314 of the state commercial code provides that an implied warranty of merchantability exists for the sale of goods if the seller is a merchant of the type of goods involved in the sale. Section 21-1-101 of the commercial code defines a merchant as “one who routinely is engaged in the sale of the type of goods involved in the sales contract.” The court in *Dinelle v. Eldson* held that individuals who sell the same products at a flea market, on a continuous basis, can be considered merchants within the meaning of the commercial code. Assuming there are no missing facts, all of the elements of the statute are met: There was a sale of goods by an individual who routinely sells those types of goods at the flea market. Under the

statute, a warranty of merchantability is implied for the sale of the toaster and the client is entitled to either the return of her purchase price or a replacement toaster.

ASSIGNMENT 3B

STEP 1: *Identify the issue.* In light of the provisions of Section 21-2-314 of the state commercial code, is there an implied warranty of merchantability for an item sold at a garage sale when the seller has a garage sale every weekend at the same location?

Instructor's Note: As with the other assignments, this is a complete statement of the issue as covered in Chapters 10 and 11; that is, it includes the rule of law and detailed facts. Without having covered those chapters, students may state the issue more broadly, such as, "Is there a warranty for goods sold at a garage sale?"

STEP 2: *Identify the rule of law.* The laws governing the sale of goods are Sections 21-2-314 and 21-1-101 of the state commercial code. Case law—*Dinelle v. Eldson*—verifies that the court held that a flea market seller can be considered a merchant within the meaning of the commercial code if the seller sells the same products at the flea market on a continuous basis.

STEP 3: *Determine how the rule of law applies to the issue.*

Part I: Identify the Component Parts (Elements) of the Rule of Law.

According to Section 21-2-314, for an implied warranty of merchantability to exist for the sale of goods, the following elements must be present:

1. A sale
2. of goods
3. by a merchant with respect to goods of that kind

According to Section 21-1-101, a merchant is "one who routinely is engaged in the purchase and sale of the kind of goods involved in the sales contract."

Part II: Apply the Facts of the Client's Case to the Component Parts.

The first element is met because the transaction was a sale. The second element is met because the sale was a sale of goods: the toaster. The third element may or may not be met, depending on missing facts. Section 21-1-101 defines a merchant as "one who routinely is engaged in the purchase and sale

of the kinds of goods involved in the sales contract.” The facts do not indicate whether toasters are routinely sold at the garage sale. Without this fact, it cannot be determined whether the seller is a merchant as defined in Section 21-1-101 and, therefore, whether the third requirement of Section 21-2-314 is met.

If it is determined that the seller is “routinely engaged” in the sale of toasters at the garage sales, then the third element would be met. This would be the case, especially in light of the holding in *Dinelle v. Eldson*, in which the court held that individuals who sell the same products at a flea market on a continuous basis can be considered merchants within the meaning of the commercial code. When people who routinely hold garage sales sell the same product on a continuous basis, it can be argued that they are functionally the same as similar sellers at flea markets.

If the third element is met, then all three of the requirements of Section 21-2-314 are met, and it could be concluded that an implied warranty of merchantability exists for the sale of the toaster. Since the toaster worked for only two days, it probably is not merchantable, and under Section 21-2-314, the seller must replace the goods or return the purchase price.

Part III: Consider Possible Counterarguments to the Analysis of the Issue.

Possible counterarguments may be made based on missing facts. The facts do not indicate whether toasters are routinely sold at the garage sales. Without this fact, it cannot be determined whether the seller is a merchant as defined in Section 21-1-101 and, therefore, whether the third requirement of Section 21-2-314 is met. If the seller only occasionally sells toasters, then the seller would not be a merchant under Section 21-1-101 because the seller is not routinely engaged “in the sale of the kind of goods involved in the sales contract.” Another missing fact that may give rise to a counterargument is how the client used the toaster. If the client abused the toaster and caused it to

fail, then the toaster's failure may not have been a result of its lack of merchantability.

STEP 4: Conclusion. A conclusion cannot be reached because a key fact is missing; that is, whether the seller routinely sells toasters at his garage sales. If the seller does routinely sell toasters, then there probably is an implied warranty. Section 21-2-314 of the state commercial code provides that an implied warranty of merchantability exists for the sale of goods if the seller is a merchant of the type of goods involved in the sale. Section 21-1-101 of the commercial code defines a merchant as one routinely engaged in the sale of goods involved in the sales contract. The court in *Dinelle v. Eldson* held that sellers who sell the same products at a flea market on a continuous basis can be considered merchants within the meaning of the commercial code. In this situation, it can be argued that garage sales are the functional equivalent of a flea market. Assuming there are no other missing facts, all of the elements of the statute are met: There was a sale of goods by an individual who routinely sells those goods at garage sales. Under the statute, a warranty of merchantability is implied for the sale of the toaster, and the client is entitled to either the return of her purchase price or a replacement toaster.

ASSIGNMENT 4

The answer to this assignment will vary with each student. The goal of the assignment is to help students identify and be aware of personal views, beliefs, preconceived notions, or prejudices that could affect their ability to research and analyze a problem objectively.

ASSIGNMENT 5

Before applying the four steps of the legal analysis processes to the assignment, students may mention that preliminary preparation may be necessary. This would include gathering all the facts (given in the assignment's fact section) and conducting basic research in the law of embezzlement, such as reading the *Am. Jur.* sections on embezzlement.

STEP 1: Identify the issue. Under Section 18-6-22 of the embezzlement statute, is an individual entrusted with company checks and thus commits embezzlement when the

individual, not authorized to fill in company checks, takes the key to the locked filing cabinet where the checks are kept, fills in one of the blank checks with his name, and cashes and spends it to pay personal bills?

Instructor's Note: This is a complete statement of the issue as covered in Chapters 10 and 11; that is, it includes the rule of law and detailed facts. Without having covered those chapters, students may state the issue broadly, such as, "Was the client entrusted with the money and did he commit embezzlement when he took the check?"

STEP 2: Identify the rule of law. The statutory law is the embezzlement section of the state criminal code, Section 18-6-22. The case law is *State v. Kelley*, in which the court held that the defendant was entrusted with the money within the meaning of the embezzlement statute when the defendant knew the location of the key to a locked cabinet wherein cash was kept; was authorized to open the cabinet and remove the cash in case of a fire; and when no one was present, opened the cabinet and took the cash.

STEP 3: Determine how the rule of law applies to the issue.

Part I: Identify the Component Parts (Elements) of the Rule of Law.

Section 18-16-22 has four elements:

1. Embezzling or converting to one's own use
2. of anything of value
3. with which one has been entrusted,
4. with fraudulent intent to deprive the owner thereof

Part II: Apply the Facts of the Client's Case to the Component Parts.

Instructor's Note: Since statutory analysis is covered in Chapter 3, students' performance in Part II may not be as complete as the analysis presented here.

The client's act of filling in one of the blank checks with his name, cashing it, and using the money to pay his bills meets the first element. The check was "anything of value," which meets the second element. The third element is met because the client was entrusted with the checks within the meaning of *State v.*

Kelley—as in *Kelley*, he knew the location of the key to the cabinet and, on occasion, employees were authorized to access the cabinet. The client’s act of cashing the check to pay his own bills obviously deprived the owner of the money and evidences the client’s fraudulent intent, which meets the requirements of the fourth element.

Part III: Identify and Explore Any Counterargument or Counteranalysis.

Instructor’s Note: Since case law analysis and counteranalysis are addressed in later chapters, all is expected here is that students state that the case in some way does not apply.

A counterargument could be made that *State v. Kelley* does not apply. In *Kelley*, the defendant was specifically authorized to open the cabinet in the event of a fire. In the client’s case, department heads, on occasion, would tell specific employees to open the cabinet and bring the checkbook to them. There is no indication that the client was ever authorized to open the cabinet; therefore, the case does not apply and the client was not entrusted with the check within the meaning of the statute.

STEP 4: Conclusion. Section 18-6-22 provides that, “Embezzlement consists of . . . converting to one’s own use of anything of value, with which one has been entrusted, with fraudulent intent to deprive the owner thereof.” In the case of *State v. Kelley*, the court held that the defendant was entrusted with the money within the meaning of the embezzlement statute when the defendant knew location of the key to a locked cabinet wherein cash was kept; was authorized to open the cabinet and remove the cash in case of a fire; and when no one was present, opened the cabinet and took the cash. In this case, there is probably enough evidence to support charges of embezzlement: The client knew the location of the key to the cabinet where the checks were kept; on occasion employees were authorized to access the cabinet; and the client opened the cabinet, filled in a check, cashed it, and spent it for his own use.

ASSIGNMENT 6

Instructor's Note: This assignment is more difficult because there is no statutory law and the applicable case law does not clearly set forth specific elements that must be met. Presumably, students' application of Step 3 will be less complete than the one presented here.

Before applying the four steps of the legal analysis process to the assignment, students may mention that preliminary preparation may be necessary. This would include gathering all the facts (given in the assignment Facts section) and conducting basic research in the law of restrictive covenants, such as reading the *Am. Jur.* sections on the topic.

STEP 1: Identify the issue. Under Pennsylvania law governing restrictive covenants, is a restrictive covenant violated when the covenant restricts the use of lots to residential purposes and the owner of a lot parks and performs minor maintenance on two welding trucks on the lot?

Instructor's Note: This is a complete statement of the issue as covered in Chapters 10 and 11; that is, it includes the rule of law and detailed facts. Without having covered those chapters, students may state the issue broadly, such as, "Did Mr. Carpenter violate the restrictive covenant" or "Did Mr. Carpenter violate the restrictive covenant when he parked his welding trucks at his residence?"

STEP 2: Identify the rule of law. There is no Pennsylvania statutory law governing the issue in this assignment. The general legal principles governing the question are set forth in the case of *Jones v. Park Lane for Convalescents*, in which the court noted that land-use restrictions are not favored and are strictly construed. The specific case law is provided in *Baumgardner v. Stuckey*. In *Baumgardner*, the defendant, Mr. Stuckey, purchased residential property in a property development that was governed by restrictive covenants. One covenant provided that no lot could be used except for residential purposes. Mr. Stuckey knew about the restrictive covenant when he purchased the lot. Mr. Stuckey, a truck driver, parked his truck-tractor and one or more trailers on the property when they were not in use. The truck-tractor and

trailers were used in conjunction with his business. The court enforced the restrictive covenant and held that Stuckey's storing of the truck-tractor and/or trailers on the property violated the covenant requirement that the property be used solely for residential purposes.

STEP 3: Determine how the rule of law applies to the issue.

Part I: Identify the Component Parts (Elements) of the Rule of Law.

The case law governing the issue does not set forth specific elements. The general legal principles governing the issue are that land-use restrictions are not favored and are strictly construed (*Jones v. Park Lane for Convalescents*).

The specific case, *Baumgardner v. Stuckey*, requires that:

1. A restrictive covenant must restrict the use of property to residential purposes.
2. The individual must know about the restrictive covenant when purchasing the lot.

Instructor's Note: It is not clear from the information provided from the case whether this is a requirement. It is included here because it is included in the facts of the case.

3. The vehicles must be used in conjunction with the individual's business.
4. The vehicles must be parked on the residential property.

Part II: Apply the Facts of the Client's Case to the Component Parts.

1. A restrictive covenant must restrict the use of property to residential purposes. The first element is met because the lot Mr. Carpenter purchased is subject to a restrictive covenant that restricts the use of the property to residential purposes.
2. The individual must know about the restrictive covenant when purchasing the lot. The second element is met because the deed to the property Mr. Carpenter purchased includes a notation that the property is subject to the Declaration of the Covenants, Conditions, and Restrictions of River View Subdivision.

3. The vehicles must be used in conjunction with the individual's business. Mr. Carpenter's use of the trucks solely in conjunction with his welding business meets the third element.
4. The vehicles must be parked on the residential property. The fourth element is met because Mr. Carpenter parks two of his welding trucks on a large parking area that he has cleared next to his residence.

Part III: Identify and Explore Any Counterargument or Counteranalysis.

A possible counterargument is that *Baumgardner* is not on point because, in *Stuckey*, the defendant stored equipment as well as a tractor-trailer on the property, but in this case, Mr. Carpenter merely parked his work vehicles on the property. A second counterargument is that just because the restrictive covenant is included in the deed to Mr. Carpenter's lot does not mean he "knew about" the restriction. According to the facts of the *Baumgardner* case, Mr. Stuckey knew of the restriction. Further research should be made to determine whether the inclusion of a restrictive covenant in a deed means that the purchaser "knows about" the restriction.

STEP 4: Conclusion. In *Jones v. Park Lane for Convalescents*, the court noted that land-use restrictions are not favored and are strictly construed. In *Baumgardner v. Stuckey*, the court held that the storage at Mr. Stuckey's residence of a truck-tractor and trailers (used in conjunction with his business) violated a covenant requirement that the property be used solely for residential purposes. In this case, Mr. Carpenter's parking at his residence of his welding trucks (used in conjunction with his business) violates the covenant restricting the property to residential uses.

MindTap Study Questions: Answers

1. The object of legal analysis and legal research is to analyze the factual event presented by the client and determine the following:
 - What legal issue (question) or issues are raised by the factual event?
 - What law governs the legal issue?

- How does the law that governs the legal issue apply to the factual event, including what, if any, legal remedy is available?
2. Legal analysis is the process of identifying the issue or issues presented by a client's facts and determining what law applies and how it applies.
 3. The following are the steps of the legal analysis process:
 - STEP 1: Issue.** The identification of the issue (legal question) or issues raised by the facts of the client's case
 - STEP 2: Rule.** The identification of the law that governs the issue
 - STEP 3: Analysis/Application.** A determination of how the rule of law applies to the issue
 - STEP 4: Conclusion.** A summary of the results of the legal analysis
 4. IRAC is the acronym used in reference to the legal analysis process. IRAC is composed of the first letter of the descriptive term for each step of the analysis process—*I*ssue, *R*ule, *A*nalysis/*A*pplication, and *C*onclusion.
 5. The following preliminary preparation must take place:
 - All the facts and information relevant to the case should be gathered.
 - Preliminary legal research should be conducted to gain a basic familiarity with the area of law involved in the case.
 6. The major role that the facts play in the analysis process is as follows:
 - **Issue.** The key facts are included in the issue.
 - **Rule.** The determination of which law governs the issue is based on the applicability of the law to the facts of the client's case.
 - **Analysis/Application.** The analysis/application step is the process of applying the rule of law to the facts.
 - **Conclusion.** The conclusion is a summation of how the law applies to the facts, a recap of the first three steps. It requires the facts.
 7. When identifying and reviewing the facts at the outset of the analysis process, the following should be included:

- Be sure you have all the facts.
 - Study the available facts to see if additional information should be gathered before legal analysis can properly begin.
 - Organize the facts. Group all related facts. Place the facts in a logical order, such as chronological order.
 - Weigh the facts.
 - Identify the key facts. Determine which facts appear to be critical to the outcome of the case.
8. The following three considerations involve issues to keep in mind when performing Step 1 of the analysis process:
- **Multiple Issues.** The client's fact situation may raise multiple legal issues and involve many avenues of relief.
 - **Separate the Issues.** Analyze and research each issue separately and thoroughly.
 - **Focus on the Issues of the Case.** Keep your focus on the issues raised by the facts of the client's case or on those issues that you have been assigned to research.
9. When performing Step 2 of the analysis process, the type of law that may govern the issue includes the following:
- **Enacted Law.** The legal issue may be governed by enacted law.
 - **Case Law.** The issue may be governed by rules or principles established by the courts.
10. The following are the three parts of Step 3 of the analysis process:
- Part 1:** Identify the component parts (elements) of the rule of law.
 - Part 2:** Apply the elements of the law to facts of the client's case.
 - Part 3:** Consider the possible counterarguments to the analysis of the issue; that is, conduct a counteranalysis of the analysis.
11. Step 4 of the analysis process may include the following:
- A recap of the determination reached in the analysis/application step
 - A consideration or weighing, based on the analysis, of what action a court may take

- or how a court may rule upon the issue
 - The identification of additional facts or other information that may be necessary as a result of questions raised in the analysis of the problem
 - The identification of further research that may be necessary in regard to the issue
 - The identification of related issues or concerns that became apparent as a result of the research and analysis
12. The following are four matters to keep in mind in regard to focus and the analysis process:
- When identifying the issue, focus on the facts of the client's case. Ask yourself, what must be decided about which of the facts of the client's case?
 - When identifying the rule of law, focus on the facts of the case and the elements of the rule of law.
 - When analyzing and applying the rule of law in Step 3, focus on the client's facts and the issue or question being analyzed.
 - Focus on the work. Avoidance and procrastination are deadly.
13. Rule 1.1 of the American Bar Association's Model Rules of Professional Conduct requires that a client be represented competently.
14. In the context of legal research and analysis, intellectual honesty means researching and analyzing a problem objectively.
15. If a legal researcher finds nothing, they should look to another source of law, reconsider the issue and key/search terms, reconsider the legal theory, and consider that the issue is a matter of first impression.
16. Secondary authority may be relied on by a court if there is no primary authority or if it is unclear how the primary authority applies.
17. The sequence for conducting legal research is as follows:
- First, locate the primary authority that governs the issue.
 - Second, if there is no primary authority that applies or if additional authority is needed to help interpret the primary authority, then look to secondary authority.