Reading Techniques: Statutes, Rules, and Regulations


Statutes, rules, and regulations (which I will refer to collectively as “statutes”) are written in a compact form that conveys a great deal of meaning in few words. Reading them is a specialized skill. It can be hard, so be prepared to devote time and practice to reading statutes. Even more time is needed for statutes that are not written well.

Go slow. Even experienced lawyers cannot whip through a statute at the same speed that they would breeze through a magazine article. This is not a time to skim! Every word can count. Also, things omitted from a statute can be as important as the things included. It takes time and imagination to figure out what is absent.

Get the Big Picture. The most important question for any statute is to determine in which situations it should be used. Situate the statute within the big picture before turning to its details. What is the general purpose of the statute? In which jurisdictions does it apply? What activities does the statute cover? When in time should the statute be used? Do other statutes deal with related topics? Having a clear sense of when and whether to invoke a statute is crucial, because a lawyer will never reach the right result by applying the wrong statute.

Divide statutes into meaningful chunks. Every statute, even a short one, comprises smaller chunks. Read statutes with a pencil in hand so that you can draw lines, circles, brackets, or arrows indicating which words of a statute go together and which represent separate concepts. If there are separations between words that relate closely to each other (like a subject and a verb, or a preposition and its object), find ways to mark up the statute to make clear which portions fit together.

It can be enormously helpful to enter a statute into a word processor so the text can be moved around, broken into separate lines, indented, bulleted, highlighted or otherwise annotated. This makes the separate parts more visible than they appear on the printed page. It is very helpful to insert a line break whenever you encounter “and” or
“or.” Most ordinary English sentences use Subject – Verb – Object order (“The clerk sorted the papers”), so it may be helpful to reorder the statute in that way. It will also be useful to highlight words whose meaning may require further attention.

Here is a portion of the awkwardly written federal statute known as the Equal Access Act. The actual statute is on the left and an annotated version, created to help study the statute, appears on the right. “Terms of art” (words or phrases that appear to have specialized legal meaning different from their use in ordinary language) are highlighted. Which is easier to comprehend?

<table>
<thead>
<tr>
<th>It shall be unlawful for any public secondary school which receives Federal financial assistance and which has a limited open forum to deny equal access or a fair opportunity to, or discriminate against, any students who wish to conduct a meeting within that limited open forum on the basis of the religious, political, philosophical, or other content of the speech at such meetings. 20 U.S.C. § 4071(a).</th>
<th>It shall be unlawful for</th>
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<tbody>
<tr>
<td>[SUBJECT]</td>
<td>any public secondary school which</td>
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<tr>
<td>*receives Federal financial assistance and</td>
<td></td>
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<tr>
<td>*which has a [limited open forum]</td>
<td>[VERB]</td>
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<tr>
<td>[to [on the basis of the ... content of the speech at [[student]] meetings]</td>
<td></td>
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<tr>
<td>*equal access [to] or</td>
<td></td>
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<tr>
<td>*a fair opportunity to,</td>
<td></td>
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<td>or</td>
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<td>[to] [discriminate [on the basis of the ... content of the speech at [[student]] meetings] against</td>
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<td>[OBJECT]</td>
<td></td>
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<td>any students who wish to conduct a meeting within that [limited open forum]</td>
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**Identify “If” and “Then” Components.** Any statute can be rephrased as an “If/Then” statement. If certain facts exist, then certain legal consequences will result. The If and Then components will rarely be of equal length and will not always appear in order. The Equal Access Act begins with a short Then (“it shall be unlawful”), followed by a lengthy If. Both the If and the Then may contain exceptions, indicated by words like “except,” “however,” “provided,” “but not,” or their logical equivalents.

**IF: Statutory elements.** Legal consequences will be triggered by combinations of facts, usually called elements. Some statutes separate their elements with internal headings and numbering; this can be very nice when it happens. The portion of the Equal Access Act quoted above has no subdivisions, so different people may identify a different number of elements within it. For example, I wrote the “Subject” section in the right-hand column as two elements, but it could have been five: (a) a school that; (b) is public;
(c) is secondary; (d) receives Federal funds; and (e) has a limited open forum. However you divide up the elements, pay careful attention to the relationships among them, usually signaled by conjunctions ("and," "or," "but," "except," and so on). In the example above, the elements in the "Subject" section are joined with "and," while the elements in the "Verb" section are joined with "or." These differences are crucial. Always check to make sure you understand which terms are joined by "and" and which by "or." Sometimes conjunctions are implied, as in the phrase "public secondary school" (implying a school that is public and secondary).

"THEN": Statutory consequences. If the elements are satisfied, then the statute's consequences come into play. There are three general types of statutory consequences: mandatory, prohibitive, and permissive.

- A mandatory result means that something must happen if the elements are established. Example: "Agencies must provide copies of nonconfidential documents upon request." Clues to mandatory results are words like "must," "shall," or their logical equivalents.
- A prohibitive result means that something must not happen if the elements are established. Example: "A person may not be punished under a criminal statute for acts that occurred before the statute was enacted." Clues to prohibitory results are words like "not," "forbidden," "unlawful," or their logical equivalents.
- A permissive (or discretionary) result gives the decisionmaker some choices about what will happen if the elements are established. Example: "The court may impose a sanction on an attorney who makes frivolous legal arguments." Clues to mandatory results are words like "may," "can," "ought" or their logical equivalents. (If "may" or "can" is followed by "not", the statute is prohibitive.)

Terms of Art. Make notes to yourself about any terms whose meanings are unclear or debatable. Terms of art are sometimes defined in a statute. In the Equal Access Act, the phrase "limited open forum" is defined in 20 U.S.C. §4071(b); "fair opportunity" in 20 U.S.C. §4071(c); and "secondary school" in 20 U.S.C. §4072(1). Statutes often assume that undefined terms will have the same meanings they have in other relevant contexts. Legal dictionaries can be helpful to identify and define terms with generally accepted legal meanings. When a term is not found in a legal dictionary, or the legal dictionary definition does not make sense in context, ordinary dictionary definitions may be useful. Ultimately, unclear or debatable terms must be defined through court opinions applying the statute to concrete facts.

Self-Made Hypotheticals. Because statutes tend to be written in abstract language, it will be extremely helpful to invent a few hypothetical scenarios showing how the statute might operate. Develop three types of examples: ones where the statute is plainly satisfied, ones where it is plainly not satisfied, and ones that are arguable.

For example, here are some hypotheticals that could be used to flesh out the Equal Access Act (see text on previous page):
Hypo #1 (statute clearly violated): A high school that receives federal funds allows all student clubs EXCEPT gay rights clubs to hold meetings in empty classrooms.

Hypo #2 (clearly not violated): A private elementary school that receives no federal funds does not allow any student clubs to meet in empty classrooms at any time. (Not a “secondary” school, receives no federal funds, access is not based on content of speech at meetings, and school is not operating a “limited public forum”.)

Hypo #3 (uncertain): A middle school that receives federal funds allows student clubs to hold meetings in empty classrooms, but only if the clubs have both male and female members. (Uncertain if middle school is “secondary,” and unclear if the rule against single-sex clubs is “on the basis of the content of the speech” at the club meetings.)

A person is guilty of residential burglary if, with intent to commit a crime against a person or property therein, the person enters or remains unlawfully in a dwelling other than a vehicle.


**BIG PICTURE:** This statute defines the crime of residential burglary in the state of Washington.

**IF** a person

* enters or
* remains unlawfully

♦ in a dwelling

♦ [exception] other than a [vehicle]

> with intent to commit a crime against a person or property [in the dwelling]

**THEN** the person is guilty of residential burglary.

Hypo #1 (clearly violated): Frank breaks down the locked door of Lisa’s apartment and enters it with intent to steal Lisa’s jewelry.

Hypo #2 (clearly not violated): Frank walks through the unlocked door of a restaurant that is open to the public 24 hours a day, with intent to rob the cash register. (Not a “dwelling.”)

Hypo #3 (uncertain): Frank is invited to a party in Lisa’s recreational vehicle. Lisa tells him to leave after he starts to smoke marijuana. He stays ten minutes to finish his marijuana before leaving. (Uncertain if an RV falls within the “vehicle” exception to “dwelling;” uncertain whether remaining ten minutes after being told to leave constitutes “remaining unlawfully;” arguably unclear whether using illegal drugs in someone’s dwelling involves intent to commit a crime “against” persons in the dwelling.)