

HOW TO READ A STATUTE OR A RULE OF THE FRCP¹

The first year of law school is not just about learning the law. It's also about learning how to learn the law. And one of the key skills you'll need to learn is how to read and interpret statutes and similar materials. Here, I'll first distinguish between federal statutes, federal regulations, and Federal Rules such as the Federal Rules of Civil Procedure ("FRCP"). I'll then discuss approaches to reading and understanding these dense materials.

Federal statutes. Federal statutes are enacted by the United States Congress. Title 28 of the United States Code is the section on "Judiciary and Judicial procedure," and contains many sections important in our readings. An example is 28 U.S.C. § 1441, the general removal statute.

Federal regulations. Federal regulations aren't enacted by Congress, but are instead issued by an administrative agency, such as the Federal Communications Commission ("FCC"). Once codified, federal regulations are placed in the Code of Federal Regulations, or "C.F.R." An example is 47 C.F.R. § 1.1, regarding proceedings before the FCC.

Federal Rules. The Federal Rules of Civil Procedure ("FRCP") aren't statutes because they're not enacted by Congress. They're not regulations because they're not issued by a federal administrative agency. Instead, the FRCP is drafted by an Advisory Committee. Its proposals are subject to publication and public comment. Any approved proposals are then reviewed, in turn, by the Standing Committee of the Judicial Conference of the United States, the Judicial Conference, and the United States Supreme Court. If the Supreme Court adopts the changes, they are then submitted to Congress. If Congress does nothing, the changes take effect seven months later.

SIDEBAR: Be aware that the word "rules" is used both to refer to the rules of the FRCP, as well as in a broader sense regarding rules of law.

TECHNIQUES

1. Read the *entire* statute or rule slowly and carefully.
2. Identify the structure and key language of the statute or rule.
3. Flowchart or diagram the statute or rule.
4. Read the cases and annotate the flowchart or diagram.

Let's discuss each of these steps in detail.

¹ With thanks to Prof. Elizabeth Pendo, whose materials I used in putting the first version of this document together in 2006. Prof. Pendo notes in her materials that portions were in turn inspired or borrowed from materials in GERALD F. HESS & STEVEN FRIEDLAND, *TECHNIQUES FOR TEACHING LAW* 337-38 (1999).

1. Read the *entire* statute or rule slowly and carefully.

The first time you read a statute or rule you should read it slowly and carefully. Do it *before* you read the assigned cases. Sometimes the cases illustrate the application of a statute or rule, or provide meaning to indeterminate terms, or discuss splits in legal authority. Importantly, keep in mind that few cases explain every aspect of a statute or rule. Therefore, cases cannot substitute for careful reading and consideration of the statute's or rule's language. As always, be a *critical* reader and thinker.

2. Identify the structure and key language of the statute or rule.

When reading a statute or rule, identify the structure and key language. Use consistent marks to identify such components of statutes or rules.

a. Structure: sentence structure, logical connectors, and punctuation.

- **Sentence structure (brackets).** Statutes and rules are densely written, and many sentences contain multiple clauses and dependent clauses. Be sensitive to logical connectors and punctuation that set clauses off from one another. So first read a sentence's main clause while ignoring dependent clauses. Once you determine the meaning of the main clause, then read the entire sentence as a whole to see how dependent clauses modify the main clause. That way, you can digest a statute or rule in bite-sized chunks. Use a consistent type of notation to set off clauses (such as a **bracket**).
- **Logical connectors (boxes).** Logical connectors can serve several functions, including: 1) indicating logical structure; 2) noting exceptions, or "caveats," to a rule; and/or 3) noting the existence of dependent clauses. They include: "AND," "OR," "IF," "EXCEPT," "WHEN," "UNLESS," "BUT," "BUT IF," "BUT NOT," and "HOWEVER." For example, if a section has three subsections separated by an "AND," the meaning is entirely different from three subsections separated by an "OR." Use consistent notation (such as a **box**).
- **Punctuation.** Pay close attention to punctuation. For example, a comma's presence or absence may completely change the meaning of a statute or rule.

b. Words: may/must, key terms/language, and squishifiers.

- **"MAY" versus "MUST" (ovals or circles).** Many statutes or rules state that someone "MAY," "MUST," "SHOULD," or "SHALL" take action. "MAY" generally indicates discretion, i.e., that a party or the court gets to choose, within limits, whether to do or not to do something. "MUST" generally indicates that somebody lacks such discretion and is obligated to do or not do something. (Sometimes, "MAY" acts like "MUST" or vice-versa.) "SHOULD" and "SHALL" are more uncertain, and depending on context, might function like "MUST" or instead indicate something that is not mandatory but strongly urged. Use consistent notation for these terms (such as an **oval or circle**).

- **Key terms and language (underline).** Each statute or rule contains terms or phrases that are important. Some terms or phrases may be ambiguous or vague. The meaning of such terms may be illuminated by cases or secondary materials. Regardless, always consider arguments you might make on the meaning or significance of language and structure. Use a consistent type of notation to set off important terms and phrases (such as an underline).
- **“Squishifiers” (a/k/a “Weasel Words”) (double underline).** Some statutes and rules contain words or phrases that are intentionally indeterminate, such as “reasonable” or “when justice so requires.” Such words and phrases are included to give courts flexibility, or invite courts to create additional rules and standards to flesh out the meaning. I call such words and phrases “squishifiers” because they intentionally inject an element of indeterminacy into the analysis. Such terms are oftentimes also called “weasel words.” Use consistent notation to set off squishifiers (such as a double underline).

3. Flowchart or diagram the statute or rule.

Flowchart or diagram. Some people are visual and work best with hand-written flowcharts. If you learn best that way, try diagramming the statute or rule in the form of a flowchart or decision tree. Others might type up the statute or rule, breaking it up and restructuring it in a way that highlights its logical structure. Myself, I fall into the latter category: as a student, I would cut & paste the statute or rule into a new document and shift its text around to illustrate its logical structure in ways that made sense to me. “Digesting” a statute or rule in this manner helps your learning tremendously. Such efforts may later be pasted into your course outline.

4. Read the cases and annotate the flowchart or diagram.

Cases. The cases and other assigned readings are important in several ways. First, they illustrate some (but not all) of the functioning of the statutes or rules we read. Second, they show how courts give meaning to important and/or ambiguous words and phrases in the statutes or rules. Third, they may reveal splits in legal authority, where different courts (such as the federal Courts of Appeals) may view the law differently.

Annotate. Note any questions that you have, and especially any ambiguous language. Some students like to keep a separate list of questions with written answers, or to pencil in a “?” in the margin of the statutes book that can be erased after resolving questions. Add comments and case names, etc., after you read the assigned cases, and after class discussion. I also liked to add “blurbs” about cases and explanatory hypotheticals to my typed-up version of a statute or rule.