

Legal Analysis *and* Writing

Third Edition

William H. Putman



CHAPTER 5

Key Facts

Outline

- I. Introduction
- II. Facts in General: Definition
- III. Importance of Facts
- IV. Types of Facts in General
- V. Key Facts: Definition and Types
- VI. Key Facts Identification: Client's Case
- VII. Key Facts Identification: Case Law
- VIII. Key Point Checklist: *Identifying Key Facts*
- IX. Application

Learning Objectives

After completing this chapter, you should understand:

- What key facts are
- The difference between background and key facts
- The role and importance of key facts
- How to identify key facts in a client's case
- How to identify key facts in a court opinion



Alice was recently hired by the Kinsey law firm and placed under the guidance and supervision of Karen, a fifteen-year-veteran paralegal. They just finished the initial interview with Mr. Aper. Alice sat in on the interview to observe the process and gain experience. After the interview, Karen told Alice, "I'm going to prepare a summary of the interview, then prepare a list of the potential issues. I want you to identify the key facts that should be included in the statement of the issues."

Alice's notes of the interview indicate that Mr. Aper owns a one-thousand-acre farm on the outskirts of town. He has lived on the farm for the past 20 years. About two hundred acres of the property

are forested, and deer are often seen in the forest. Mr. Aper refuses to allow hunting on the property and, to discourage hunting, has fenced and posted the property.

One day two weeks ago, Mr. Aper noticed a new path entering the forested portion of the farm. Someone had removed part of the wood fence surrounding the forest and apparently entered the property several times. He followed the trail and found several small pine trees cut down and a crude lean-to constructed from the trees. In front of the lean-to was a small fire pit where recently there had been a fire; the coals were still warm. Some of the wood removed from the fence was still smoldering in the fire. Mr. Aper got up before dawn the next

morning, and watched the lean-to from a hidden spot in the bushes. Shortly after sunrise, he saw his neighbor, Eric Rascon, an avid bow hunter, come down the trail carrying a hatchet and loaded down with bow-hunting gear.

Eric proceeded to set up camp. He started a fire with wood from the fence and some old tree branches, and cut down a small tree and added it to the lean-to. Mr. Aper stepped out from behind the bushes and confronted Eric. “What are you doing here? You know you can’t hunt here. Who told you that you could cut down my trees? Get off

my property!” Eric angrily replied, “You stingy old man. These deer should be hunted; it’s nature’s way. I’ll leave, but I’ll be back and start again; you can’t watch this forest every hour of every day.” Eric then left.

Mr. Aper wants to take whatever legal action he can against Eric. Alice’s assignment is to identify the key facts in the case. The application section of this chapter addresses how Alice performs her assignment. The chapter discusses facts in general and emphasizes the critical role of the key facts in a case.

I. INTRODUCTION

Most, if not all, attorney–client relationships begin with the initial interview with the client. During the interview, the client presents information concerning a situation the client believes requires a legal solution. If a lawsuit is ultimately filed, the process begins here. The role of the attorney, often performed by the paralegal, is to sift through the facts and determine what relief, if any, the law may provide for the problem raised by the facts. Any legal solution to a client’s problem involves the application of the law to the facts of the client’s case.

Usually some of the factual information the client provides in an interview is not relevant to the outcome of the case. Sometimes important factual information is left out. Before a legal solution to the client’s problem can be found or a determination made on whether a lawsuit should be filed, it is necessary to identify the facts that are critical to the outcome of the case—the key facts. To ensure that all the key facts are identified, to make sure none are missed, all the factual information concerning the problem must be identified at the outset. This is accomplished by a thorough and comprehensive initial interview.

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

For Example In regard to the hypothetical at the beginning of the chapter, assume the paralegal, based on her experience, concludes that the burning of the fence may give rise to a cause of action for conversion (an improper act that deprives an individual of the rightful possession of the individual’s property). Upon conducting subsequent research, she learns that conversion requires that the person suing must be in possession of the property.

It is an important fact, therefore, that Mr. Aper not only owns the land but that he was in possession of the land when the events took place. If the land is rented out to a tenant, the tenant would be in possession of the land. The tenant, being the person in possession of the land, would have the right to sue for conversion. The landlord, Mr. Aper, would not be in possession of the land and, therefore, would not have a right to sue Eric Rascon for conversion. The importance of the fact that Mr. Aper not only owned the land but that he was also in possession of it may not become apparent until the legal question and governing law are identified.

This example illustrates another important point concerning facts. When a lawsuit proceeds to trial, the facts presented at trial are those facts identified and considered important prior to trial. The identification and gathering of these facts depends entirely on the thoroughness and quality of the pretrial preparation. If a sloppy job is done, that is, if the facts are not thoroughly gathered and researched, the result could be a poor outcome and the case may be lost.

For Example

Referring to the previous example, assume the land was leased. Mr. Aper did not reveal this fact during the interview because, being the owner of the land, he did not think it mattered who was in possession. The interview was not thorough because Mr. Aper was not asked who was in possession of the land. Assume, also, that the paralegal believed that the possession requirement of conversion is met if the party suing owns the property. The paralegal did a sloppy job of research and did not thoroughly research what constitutes possession under the law.

If a lawsuit alleging conversion against Mr. Rascon went to trial and this key fact was not identified, Mr. Aper would lose because he was not in possession of the land and did not have a right to sue. The key fact of who was in possession of the land was not identified prior to trial and, therefore, was not presented at trial. The poor quality of the interview and subsequent research resulted in a poor outcome.

Ethics. This may appear to be an extreme example, but it illustrates an important point: the facts presented at trial and often the outcome of the trial are entirely dependent on the quality of work prior to trial. As noted in Chapter 2, Rule 1.1 of the American Bar Association's Model Rules of Professional Conduct requires that a client be provided competent representation. A failure to conduct a proper interview and identify the key facts denies the client competent representation.

The focus of this chapter, and the task assigned to many paralegals, is the identification of those facts that give rise to the legal dispute in either a client's case or a court opinion. The facts that give rise to the legal dispute are often referred to as significant, material, or key facts. In this chapter, and throughout the text, these facts will be referred to as key facts.

As noted in Chapters 6 and 7, key facts and issues are integrally related. The key facts are an essential element of the issue. They are essential in identifying and stating the issue because they give rise to the legal dispute. Disputes arise and take place in the context of facts.

II. FACTS IN GENERAL: DEFINITION

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

fact

Information concerning some thing, action, event, or circumstance.

For Example In the hypothetical at the beginning of the chapter, the presence of the lean-to, Mr. Rascon’s actions of entering the property, and Mr. Rascon’s statements are all facts.

Facts should not be confused with a **rule of law**. A rule of law is a standard, established by a governing authority, that prescribes or directs action or forbearance. It may be a constitutional provision, statute, ordinance, regulation, or case law doctrine. Its application determines the outcome of the question raised by the facts of a dispute.

rule of law

A standard, established by a governing authority, that prescribes or directs action or forbearance.

For Example Title 23, section 1991, of the state statutes provides that the maximum speed limit in a school zone is 10 mph while school is in session. When an individual proceeds through a school zone at 12 mph, this statute governs the question of whether the individual is speeding, that is, the outcome of the question raised by the facts.

Before defining and discussing key facts, it is helpful to consider the importance of facts in general and to identify and distinguish the various types of facts present in a client’s case and a court opinion.

III. IMPORTANCE OF FACTS

The importance of giving due consideration to the facts of a dispute cannot be over-emphasized. Often minimal attention is given to the facts. This is surprising because our legal system revolves around resolving disputes by applying the *rules of law* to the *facts of a case*. Notice the two major factors here—rules of law and facts of the case. Both are equally important. Novice researchers, however, often focus primarily on the rules of law.

The issue is the precise question raised by the specific facts of the client’s case. Therefore, the facts are an essential element of the issue. Rules of law are general principles designed to apply to multiple fact situations and determining which law governs the issue is primarily governed by the facts of the client’s case. Consequently, the role facts play in determining what is in dispute in a case and which law applies is of primary importance. Clients often have little knowledge or concern about general legal principles, but they are very concerned with how the law applies to the facts of their case.

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

For Example Tom is stopped at a light at a four-way intersection in the city, waiting for the light to change. Mary, stopped behind him, accidentally lets her foot slip off the brake, and her vehicle bumps into Tom's vehicle. After exiting their vehicles and examining them, they discover that there is no visible damage to either vehicle. Tom, however, complains of neck pain from whiplash.

Tom sues Mary for negligence. The paralegal working for Mary's attorney knows that the elements of negligence are duty, breach of duty, proximate cause, and damages. As a result of her research and education, she also knows that in order to state a claim, Tom must present facts that establish each of the elements of negligence. Although there are facts to support the first three elements, because there was no damage to the vehicle, it is questionable whether the impact was severe enough to cause neck injuries resulting from whiplash. Also, if the impact did not cause whiplash injuries and there is no damage to Tom's vehicle, there are no facts that establish the element of damages. This hypothetical is referred to as the minor impact example throughout this chapter.

In the preceding example, as in every case, there are two equally important factors—the law and the facts. The law establishes the conditions that must be met in order to state a claim for negligence, that is, the elements of negligence. The outcome of the application of the law depends on the existence of facts, and on one fact in particular in the case—was Tom's injury caused by the impact? Like this example, all legal problems are fact-sensitive, that is, the outcome depends on the existence or nonexistence of a particular fact or facts.

Another reason facts are important is that the determination of whether a court opinion is on point is largely governed by the similarity between the facts of the court opinion and the facts of the client's case. There must be a sufficient similarity between the key facts of the court opinion and those of the client's case before the court opinion can be considered on point and apply as precedent in the client's case.

IV. TYPES OF FACTS IN GENERAL

In either a client's case or a court opinion, there may be hundreds of facts, some of which are critically important, some of which are not. To identify the legal issue, the paralegal must sort through the facts and determine which facts give rise to the legal question and are essential to its resolution. An understanding of the three basic categories of facts present in a case is helpful to this process; these categories are presented in Exhibit 5–1.

irrelevant facts

Facts coincidental to the event but not of significant legal importance in the case.

A. Irrelevant Facts

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

■ Irrelevant Facts	Facts coincidental to the event but not of significant legal importance in the case.
■ Background Facts	Facts presented in a court opinion, case brief, or legal memorandum that put the key facts in context. Facts that give an overview of a factual event and provide the reader with the overall context within which the facts occurred.
■ Key Facts	The legally significant facts of a case that raise the legal question of how or whether the law governing the dispute applies. The facts that establish or satisfy the elements of a cause of action and are necessary to prove or disprove a claim. A fact so essential that, if it were changed, the outcome of the case would be affected or changed.

Exhibit 5-1
Types of Facts

For Example In the minor impact example, the race or gender of the parties, the day of the week, and whether Mary's car was insured are all irrelevant facts. They are irrelevant because they are facts that are not necessary to establish or satisfy the elements of the cause of action in the case. They are not necessary to prove or disprove the claim. The race or gender of the parties is irrelevant to the question of whether Mary was negligent. Whether it was Sunday or Wednesday when the accident occurred does not affect the outcome of the case. Mary's insurance status will not affect a determination of whether she is liable.

Beware: Certain facts may be relevant in one situation and not relevant in another.

For Example In the minor impact example, whether it was snowing is probably not a relevant fact. Both vehicles were stopped at a light, and the existence of snow should not affect Mary's duty to keep her foot from slipping off the brake pedal. If the facts, however, were that she was approaching the stoplight and failed to apply the brakes in a timely fashion, the existence of snow conditions becomes a relevant fact. The nature of her duty to exercise care while driving varies with the weather conditions, and the existence of snow conditions requires her to exercise greater care when braking.

B. Background Facts

Background facts are those irrelevant facts that put the key facts in context. They give an overview of the factual event and provide the reader with the overall context within which the key facts occurred. They are not key facts because they are not essential to a determination of the issues in the case, but they are usually necessary and often helpful because they provide information that helps the reader have an overall picture of the environment within which the key facts occurred.

background facts

Facts presented in a court opinion, case brief, or legal memorandum that put the key facts in context. They give an overview of a factual event and provide the reader with the overall context within which the key facts occurred.

For Example In the minor impact example, the location and type of intersection are background facts that provide the reader with an overview of the context and scene of the collision. The reader is aware that the impact took place at an intersection in the city, rather than in the country. This information is not essential, but it may be helpful for many reasons. The reader, for example, may want to visit the scene at a later date to investigate and determine whether individuals working in the area witnessed the accident.

C. Key Facts

The following section discusses the definition and types of key facts.

V. KEY FACTS: DEFINITION AND TYPES

A. Definition

key fact(s)

The legally significant facts of a case that raise the legal question of how or whether the law governing the dispute applies. They are the facts upon which the outcome of the case is determined. Key facts establish or satisfy the elements of a cause of action and are necessary to prove or disprove a claim. A key fact is a fact so essential that, if it were changed, the outcome of the case would probably change.

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

For Example Consider a fact situation where law enforcement officers are sued for battery based on the following facts. Law enforcement officers pursued a suspect on foot for five blocks after observing him snatch a woman’s purse. While making the arrest, the officers encountered resistance, used force to overcome that resistance, and continued to use force for more than a minute after the resistance ceased. The law provides that law enforcement officers may use the amount of force necessary to overcome resistance when making a legal arrest. This hypothetical is referred to in this chapter as the resisting arrest example.

What are the key facts in the preceding example? *Which of the facts, if changed, would change the outcome in this case?* If the suspect never resisted, the use of force would have been clearly improper. If the suspect never ceased resisting, the officers’ continued use of force would have been proper. If the officers ceased using force when the resistance ceased, the use of force probably would have been proper. If the arrest was illegal, the use of force would have been improper. The key facts are the following:

- A lawful arrest was being made.
- There was resistance to the arrest.
- Force was used to overcome the resistance.
- The resistance ceased.
- The use of force continued for more than a minute after the resistance ceased.

Each of these facts is a key fact. Each fact, if changed, would affect the outcome of the case.

Other facts, however, are not key facts. How far the officers pursued the suspect or the fact that the pursuit was on foot are not key facts. These facts, if changed, would not change the outcome of the case.

B. Types of Key Facts

There are two categories of key facts.

- Individual key facts
- Facts considered as a group—groups of facts

1. Individual Key Facts

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

For Example In the resisting arrest example, all the facts identified as key facts are **individual key facts**: a lawful arrest was being made, there was resistance to the arrest, force was used to overcome the resistance, resistance ceased, and the use of force continued after the resistance ceased. Each of these individual facts, if changed, would change or affect the outcome of the case.

For Example Consider a breach of contract case where the claim of breach is that payment was received nine days late, and the contract specifically provided that late payments constituted a breach of contract. The lateness of the payment is a key fact. This individual fact, if changed, would change the outcome of the case.

individual key facts

A key fact that, if it were changed, would affect or change the outcome of the case.

2. Groups of Facts

In some fact situations, no individual fact standing alone is a key fact—that is, no single fact is so significant that, if changed, it would change the outcome.

For Example An inmate is challenging the conditions of his confinement as cruel and unusual punishment. He alleges the following: there are cockroaches in his jail cell, the recreational periods are too short, his mail is improperly censored, his visitation rights are too restricted, and the temperature in his cell is too low in the winter and too high in the summer. It may be that no single fact by itself meets the test of a key fact, that is, no single fact is so critical that, if changed, the outcome of the case would change. The fact that there are cockroaches in his cell may not be sufficient, by itself, to constitute cruel and unusual punishment; the fact that the recreational periods are too short, by itself, may not constitute cruel and unusual punishment, and so on.

All the individual facts, however, when considered as a group, may determine the outcome of the case and, if changed as a group, would change the outcome. This may be observed in a court opinion when the court states, “No single fact of plaintiff’s allegations constitutes cruel and unusual punishment. When taken as a whole, however, the individual allegations combine to establish a violation of the Eighth Amendment’s prohibition against cruel and unusual punishment.”

groups of facts

Individual facts that when considered as a group, are key facts. Individual facts that when treated as a group may determine the outcome of a case.

Recognizing groups of facts is important because, when analyzing a case, you must be aware that individual facts that seem to be insignificant may be key facts when considered and weighed as a group. When addressing a problem that involves key facts as a group, first review the facts individually to determine whether any individual fact, standing alone, is a key fact. If there is no individual fact that, if changed, would change the outcome of the case, look to the facts as a group.

There is no magic formula for determining how many or what types of facts are required for facts to be considered as a group, or what is necessary for a group of facts to be considered a key fact. Usually it is necessary to consult case law and locate a case where the court addressed a similar legal problem involving a group of facts.

The next step, after defining and categorizing key facts, is to determine how to locate them in both a **client's case** and a court opinion. Because the key facts are an element of the issue, the steps involved in identifying and stating the issue necessarily include, in part, some of the steps necessary for locating key facts. Therefore, there is some overlap between Chapters 5, 6, and 7 regarding the identification of key facts.

VI. KEY FACTS IDENTIFICATION: CLIENT'S CASE

A client's fact situation usually includes a mix of facts—some irrelevant, some background, and some key. A paralegal's assignment may be to identify the key facts in the case. The four-step process presented in Exhibit 5–2 is recommended for determining which of the client's facts are key facts.

Step 1	Identify each cause action possibly raised by the facts.
Step 2	Determine the elements of each cause of action identified in step 1.
Step 3	List all the facts possibly related to the elements of the causes of action identified in step 2.
Step 4	Determine which of the client's facts apply to establish or satisfy the elements of each cause of action—the key facts.

Exhibit 5–2

Steps in Key Fact Identification: Client's Case

The following example is referred to in this section when discussing the operation of this four-step process.

For Example The paralegal is assigned the task of identifying the key facts in a case. A review of the file reveals the following facts. Jerry and Ann are neighbors. They have lived on adjoining one-half-acre lots in a rural subdivision for the past 15 years. Their children are close friends and ride the school bus together. Four years ago, Jerry put in a hedge and planted several trees along his property line with Ann. Every year since then, Jerry rakes the leaves from the hedge and trees into a big pile close to the shared property line and burns it. The prevailing wind carries the smoke and soot across Ann's property, preventing her from working in her garden and usually soiling the clothes that are drying on her clothesline. Every year she asks him to not burn the leaves, and every year he ignores her request and burns the leaves.

Ann wants Jerry to stop burning the leaves and pay her for the clothes that have been "ruined" by the smoke. When used in this chapter, this hypothetical is referred to as the trespass example.

A. Step 1: Identify Each Cause of Action

Identify each cause of action possibly raised by the facts. This step requires determining the possible cause(s) of action raised by the facts. Depending on the education and legal experience of the paralegal, this initial step may not require any research.

In the trespass example, upon reviewing the facts, the paralegal may come to a preliminary conclusion that the possible causes of action include trespass to land, private nuisance, and negligence.

B. Step 2: Determine the Elements

Determine the elements of each cause of action identified in step 1. This step usually requires some research. Research may be necessary either to determine the elements of the possible cause of action or to ensure that the law has not changed since the last time research was conducted. This step is necessary because, to state a claim and thereby obtain relief, the plaintiff must present facts that establish or prove the existence of each element of the cause of action. These facts are the key facts of the case.

For Example The assistant's research reveals that the elements of trespass to land are as follows:

1. An act
2. Intrusion on land
3. In possession of another
4. Intent to intrude
5. Causation of the intrusion

The paralegal also would identify the elements of each of the other potential causes of action identified in step 1.

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

List all the facts possibly related to the elements of the causes of action identified in step 2. This includes gathering the facts from the client interview and any interviews that have been conducted with witnesses, and reviewing any documents in the case file that may contain factual information. The client files must be checked to ensure they are complete. At the initial stages of a case, the client interview may be the only available source of information.

When listing the facts, include all facts that may possibly be related to any of the causes of action. Err on the side of listing too many facts. You want to have all possibly related facts at hand when you proceed to step 4, where the irrelevant facts are eliminated and the key facts are identified.

For Example The fact that the children ride the school bus probably is not related to any of the potential causes of action. The nature of what is being burned may be related. The number of years Jerry has burned the leaves may be related. The weather conditions when the leaves are burned may be related.

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

For Example Using trespass to land as a cause of action, take each element and determine what facts from the client's case possibly establish or are related to that element. Which of the facts relate to intrusion? Which of the facts relate to "in possession of another"? Which of the facts relate to the intent to intrude? Which of the facts relate to causation of the intrusion? After completing this process for the elements of trespass, do the same for each potential cause of action identified in the previous steps.

Note that some facts may establish or relate to more than one cause of action. Some causes of action overlap. Therefore, all the facts must be reviewed when considering the elements of each cause of action.

For Example The fact that the smoke from the burning leaves crosses on to Ann's property may establish or relate to both trespass to land and private nuisance. The smoke crossing to Ann's land may be the act of trespass, and the crossing coupled with the interference to Ann's enjoyment of her gardening may relate to nuisance. The fact that smoke crosses the property relates to elements of both of these causes of action.

D. Step 4: Determine Which Facts Apply

Determine which of the client's facts apply to establish or satisfy the elements of each cause of action—the key facts. The facts identified in this step are the key facts. Be sure to consider each fact listed in step 3 and determine whether it is essential to establish or satisfy an element of any potential cause of action. It is important to consider all the facts identified in step 3. Step 4 primarily is the process of eliminating those facts listed in step 3 that are not essential or key facts. This is accomplished by taking each element of each cause of action and identifying the facts essential to establish or satisfy that element.

For Example Referring to the trespass to land cause of action, the key facts are as follows:

1. Act—the burning of the leaves produces smoke
2. Intrusion on land—the smoke crossing over Ann's land
3. In possession of another—Ann owns and lives on the land
4. Intent—Jerry built the fires (they were not caused by lightning or the acts of another), and he continued to build fires after he was notified of the problem
5. Causation of the intrusion—the fire produced the smoke that passed over Ann's property, and there is no evidence that it came from another source

When determining which facts identified in step 3 establish or satisfy an element, apply the following test:

- “Which of these facts, if changed, would change the outcome of the application of that element?” Or, in other words,
- “Which of these facts, if changed, would affect the determination of whether there is present a fact or facts that establishes or satisfies that element?”

For Example Referring to the trespass to land cause of action, if the smoke did not pass over Ann’s land, there would be no facts to support the element of intrusion. If the smoke crossing her land came from a source other than Jerry’s land, Jerry would not be responsible for the causation of the trespass.

Other facts identified in step 3 as related to an element that do not establish or satisfy an element are not key facts.

For Example In step 3, the facts of what was being burned, the weather conditions when the burning took place, and the number of years Jerry had burned the leaves were considered as possibly related to the trespass cause of action. If it is determined that these facts, if changed, would not tend to establish or satisfy an element of trespass, they are not key facts and are eliminated from further consideration.

All the facts identified in step 4 are the key facts. They are essential to the outcome of the case.

E. Multiple Issues

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

For Example If the smoke harmlessly passes over Ann’s land and does not interfere with her use or enjoyment of the land, there may be no cause of action for private nuisance.

Additional potential causes of action may be identified as research and investigation take place. Be sure to address each element of each possible cause of action and determine whether there is any fact in the case that tends to establish or satisfy the element.

Caveat: These steps are useful tools and helpful guides when identifying key facts. They will usually help you quickly identify the key facts. Nothing, however, is fool-proof. You may not be certain that a fact meets the required standard necessary to support the existence of an element. That determination may not take place until trial.

For Example The court may rule that the smoke crossing Ann’s land is not a sufficient intrusion to constitute trespass.

Just make sure that there is some fact that *arguably* meets the requirements of each element of the cause of action.

VII. KEY FACTS IDENTIFICATION: CASE LAW

Every court opinion involves the court's application of the law to the facts of the case. The key facts are those facts in the case that the law applies to and that are essential to the decision reached by the court. If the key facts had been different, the outcome of the case probably would have been different.

Those situations where the court clearly points out the key facts are not addressed in this chapter.

For Example The court states, "The critical facts in the resolution of this dispute are..."

The focus here is on those situations where the key facts are not so easily determined, such as in cases where the court opinion intersperses many irrelevant and background facts with the key facts.

As with determining the key facts in a client's case, there is no magic formula for identifying key facts in a court opinion. The three-step process presented in Exhibit 5-3 is recommended, however, and may prove helpful.

- | | |
|---------------|--|
| Step 1 | Read the entire case with the following general question in mind: "What was decided about which facts?" |
| Step 2 | Look to the holding. What is the Court's answer to the legal question? How does the court apply the rule of law to the legal question raised? |
| Step 3 | Identify the facts necessary to the holding—the key facts.
Part 1 List all facts in any way related to the holding.
Part 2 Identify which of the listed facts are key facts—determine the key facts. |

Exhibit 5-3

Steps in Key Fact Identification: Case Law

In this section, the following example is referred to when discussing the application of these steps. Notice that the example is factually similar to the case of *Rael v. Cadena*, presented in Exhibit 4-1 in the last chapter.

For Example In the case of *Joins v. Stevens*, the court summarized the facts as follows: Jason Stevens and his nephew, Allen Stevens, knew Mark Joins for several years. The three occasionally engaged in recreational activities, such as attending baseball games and going on fishing trips. On these outings, they usually drank alcoholic beverages, often to excess. On some occasions, their spouses joined in the activities.

On one of the fishing trips, on a Sunday afternoon in July, they were standing under a tree, drinking beer, and waiting for the rain to stop so they could resume fishing. They had been drinking since morning and were a little drunk. Earlier in the day, Mark was the only one who had caught any fish. Mark had an annoying habit of bragging, especially when he drank. Jason and Allen became increasingly angry

as Mark claimed that he was the only “real fisherman” of the group. He continued bragging for an irritatingly long period. When he claimed that he was actually the “only real man” of the three, Allen lost control and beat him up. While the beating was going on, Jason yelled to Allen, “Hit him harder! Kick him! Kick him!”

Mark suffered two broken ribs and was hospitalized. He sued Jason and Allen for the tort of battery. In deciding that Jason had committed a battery, the court stated, “Although liability cannot be based upon one’s mere presence at a battery, a person may be held liable for the tort of battery if he encourages or incites by words the act of the direct perpetrator. Because he yelled encouragement to his nephew while the latter was beating Mark Joins, Jason Stevens is jointly liable with his nephew for the battery.”

A. Step 1: Read the Entire Case

Read the entire case with the following general question in mind: “What was decided about which facts?” Because the key facts in a court opinion are those facts necessary to the decision reached by the court, you must have a general overview of the case before you can focus on determining which of the facts are key facts. You must read the entire case to determine the legal question addressed and the decision reached by the court, keeping in mind the question: “What was decided about which facts in this case?”

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

By the time you finish reading the entire case, you usually realize that the decision rests on only some of the facts presented in the opinion. If at this point you have not clearly identified which of the facts are the key facts, proceed to step 2.

B. Step 2: Look to the Holding

The holding is the court’s application of the rule of law to the legal question raised by the facts of the case. It is the court’s answer to the legal question. Ask the following questions to help identify the holding:

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

In this example, the last two sentences are the court’s presentation of the rule of law and the holding—the application of the rule of law to the facts.

- Rule of law—“Although liability cannot be based upon one’s mere presence at a battery, a person may be held liable for the tort of battery if he encourages or incites by words the act of the direct perpetrator.”
- Holding—“Because he yelled encouragement to his nephew while the latter was beating Mark Joins, Jason Stevens is jointly liable with his nephew for the battery.”

C. Step 3: Identify the Key Facts

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

- Part 1: List all facts in any way related to the holding.
- Part 2: Identify which of the listed facts are key facts.

1. Part 1: List All Facts Related to the Holding

List all the facts presented in the case related to the holding. This may require going through the case and listing all the facts presented by the court. The court may present a multitude of background and irrelevant facts that in no way affect the outcome of the case. If that is the situation, identify and list only the facts that are possibly related or necessary to the decision reached.

In the preceding example, it is not necessary to list all the facts presented by the court. Some facts, such as the fact that the spouses sometimes accompanied the men, clearly are not relevant. Some facts—for example, it was a Sunday in July—are merely background facts that provide the reader with the time context of the event. All the facts relating to the argument should be included, such as the location of the argument, the fact they had been drinking, what was said, and so on.

2. Part 2: Determine the Key Facts

From the facts listed, determine the key facts by identifying those facts necessary or essential to the decision reached. Which facts determine the outcome of the case? There are several ways to identify these facts.

1. One test is to ask yourself whether the decision would have been the same if a fact had not occurred or if the fact had occurred differently. If Jason had merely stood by and watched, would he be liable for battery? In the resisting arrest example discussed in the Facts in General: Definition section earlier in this chapter, if the individual had never ceased active resistance, would the police be liable for battery? Apply this test to each fact listed.
2. If this test is applied to each fact and no single fact, when changed or omitted, would affect or change the decision, ask whether the decision was governed by the court's consideration of the facts as a group.

For Example The court may state, “No single act of the defendant is sufficient to constitute breach of contract. The defendant’s various acts, however, when taken as a whole are sufficient to establish breach.”

3. Where the court lists in its reasoning the elements of a cause of action, ask yourself which of the facts apply to establish the elements. In the battery example, the court stated that an individual may be liable if that individual “incites by words” the acts of the perpetrator. Jason’s inciting words are the facts that relate to this element.
4. Ask yourself whether the court indicates that a certain fact is a key fact.
 - a. Does the court describe a fact as “essential,” “key,” or “important”?
 - b. Is a fact repeated throughout the opinion, especially in the reasoning supporting the decision?
 - c. Does the court agree with a party’s description of a fact as critical or key?

For Example The court may state, “We agree with plaintiff’s position that the failure to make timely payment is key to a determination of whether a breach of contract occurred.”

5. Does a concurring or dissenting opinion identify the key facts? Be aware, however, that the concurring or dissenting judge may have a different view of which facts are key facts, and may identify facts as key facts that the majority did not consider key.

D. Multiple Issues

The foregoing discussion focuses on locating the key facts related to a single issue and holding in a case. Often there are several issues and holdings in a court opinion. Apply the steps presented to determine the key facts related to each issue and holding. Follow each step *completely* for each issue and holding.

Caveat: The steps discussed in this section are useful tools and guidelines. Following them helps you identify the key facts of a case. There are instances where the court may omit key facts. Also, as you read more cases and become more familiar with case law, you may automatically focus in on the key facts without using any of the steps presented here.

VIII. Key Points Checklist: *Identifying Key Facts*

- ❑ Do not overlook the importance of the facts. Facts give rise to the legal dispute and, therefore, are an integral part of it. Disputes have little meaning outside the context of the facts. How many court opinions have you read that did not have any facts?
- ❑ Key facts are those facts that establish or satisfy the elements of a cause of action and are necessary to prove or disprove a claim. Therefore, the nature and presence or absence of certain facts determines the outcome of a case.
- ❑ A useful test for determining if a fact is a key fact is to ask the question: “If this fact is changed or omitted, would the outcome of the application of the law be changed?”
- ❑ Follow the steps recommended for the determination of key facts in a client’s case. Be aware that the importance of certain facts may not become apparent until legal research is conducted and the elements of a cause of action are determined.
- ❑ When identifying key facts in a court opinion, keep in mind the question: “What was decided about which facts in this case?”
- ❑ Do not get discouraged. The process of identifying key facts becomes easier with practice, and parts of the process become intuitive.

IX. Application

This section presents examples of key fact identification in a client’s case and in a court opinion. Each example illustrates the application of the principles discussed in this chapter.

A. Client’s Fact Situation

The following example illustrates the application of the principles to the hypothetical presented at the beginning of the chapter.

Step 1 Identify Each Cause of Action. Identify each cause of action possibly raised by the facts. Using her recently completed education and limited job experience, Alice identifies three potential causes of action Mr. Aper may have against Mr. Rascon: trespass to land, trespass to chattels, and conversion. This preliminary identification may be expanded or reduced as additional research is conducted.

For Example Case law may reveal that Mr. Rascon's conduct also constitutes a private nuisance.

Step 1 provides a starting point for the identification of the key facts in the case.

Step 2 Determine the Elements. Determine the elements of each cause of action identified in step 1. For each potential cause of action, identify the elements necessary to state a claim. Research is usually required to determine the elements. Facts must be present that establish or satisfy each element of each cause of action. These facts are the key facts of the case. For illustration purposes, we will apply step 2 to the conversion cause of action.

Alice's research reveals that the elements of conversion are as follows:

- Personal property
- Plaintiff is in possession of the property or is entitled to immediate possession
- Intent to exercise dominion or control over the property by the defendant
- Serious interference with plaintiff's possession
- Causation of the serious interference

Step 3 List All Facts Related to the Elements. List all the facts possibly related to the elements of the causes of action identified in step 2. List all facts potentially related to each of the elements of each cause of action. In this fact situation, these facts include:

1. Mr. Aper owns a farm with a two-hundred-acre area that is forested and inhabited by deer.
2. The property is fenced and posted.
3. He discovered a newly traveled path through the property.
4. Part of the fence had been removed, several small trees had been cut down, and a lean-to had been constructed from the trees.
5. A fire had been built, and some of the wood from the fence was still smoldering in the fire.
6. Eric Rascon, a neighbor, was observed by Mr. Aper entering the property with his hunting gear, building a fire, and cutting a tree.
7. Mr. Aper saw Mr. Rascon add a tree to the lean-to.

Note that some of the facts included may not be related to any element, such as the fact that deer inhabit the forest or that Mr. Rascon is a neighbor. In this step, however, it is better to include all potentially related facts rather than omit them. Later, research may demonstrate the importance of a fact thought to be insignificant.

Step 4 Determine Which Facts Apply. Determine which of the client's facts apply to establish or satisfy the elements of each cause of action. The facts identified in this step are the key facts. Using the conversion cause of action as an illustration, the key facts are as follows:

- Personal property—the wood from the fence and the trees that were cut are Mr. Aper’s personal property. Research may reveal that things growing on the land are real property and, therefore, are not covered by this tort. It may be that once cut down, a tree becomes personal property. This fact should be included until research determines the status of this property.
- Plaintiff is in possession of the property or entitled to immediate possession—Mr. Aper owns and occupies the land.
- Intent to exercise dominion and control over the property—Mr. Rascon’s actions of adding the fence wood and trees to the fire and cutting down the trees for the lean-to
- Serious interference with plaintiff’s possession—the cutting of trees and burning of wood seriously interferes with Mr. Aper’s rights of possession
- Causation of serious interference—Mr. Rascon’s actions of cutting and burning are clearly the cause of the interference. There is no other factual cause present.

Note that this step results in the identification of those facts related to the elements of the cause of action and the elimination of all facts that are not necessary to establish a claim. You must apply this step to identify the key facts for each potential cause of action identified in step 1. Once this is done, all the key facts for each claim are identified. Note that the relationship between key facts, issue identification, and stating the issue is discussed in the next two chapters.

B. Court Opinion

This example illustrates the operation of the principles for identifying the key facts in a court opinion. Read the *Flowers v. Campbell* case presented in the following text and apply the steps presented in this chapter to determine the key facts of the collateral estoppel issue.

Note that the doctrine of collateral estoppel is discussed in the case. The doctrine of collateral estoppel prevents a party in a lawsuit from relitigating an issue that was decided in a previous lawsuit. In the case the trial court ruled that the question of whether the defendant, Campbell, used excessive force in resisting the assault of Flowers was already litigated in an earlier criminal case. As a result of this ruling, the trial court determined that the doctrine of collateral estoppel applied and dismissed Flowers’s claim that Campbell used excessive force. The appeal in *Flowers v. Campbell* is from this ruling by the trial court.

FLOWERS v. CAMPBELL

725 P.2d 1295 (Or. Ct. App. 1986)

ROSSMAN, Judge.

Plaintiff brought this assault and battery action to recover damages for injuries allegedly sustained in a skirmish with defendant Campbell (defendant), who was, at the time, an employee of defendant Montgomery Ward & Company. Plaintiff alleges that defendant used excessive force to repel his own aggressive behavior, for which plaintiff was convicted of assault in the fourth degree and

harassment. The trial court dismissed the action after ruling, on defendant’s motion for a directed verdict, that all material issues of fact were decided against plaintiff at his criminal trial and that he was precluded from relitigating those issues. We reverse.

The violence erupted after plaintiff accused defendant of charging him \$12.99 for a lock that had been advertised for \$9.97.¹ Plaintiff admits that he became involved in a verbal exchange with defendant immediately

¹ Plaintiff was 62 years old at fight time; defendant was 33. Plaintiff allegedly sustained a broken arm and a detached retina. Defendant’s jaw was broken.

before the fight and that he “threw the first punch.” He also concedes both that the jury at his criminal trial necessarily found that his use of force was not justified and that he is collaterally estopped from relitigating that issue. See *Roshak v. Leathers*, 277 Or. 207, 560 P.2d 275 (1977). He contends, however, that the dispositive issue in this civil action is whether defendant responded to his own admitted aggression with excessive force. He contends that that issue was not litigated at his criminal trial.

Under the doctrine of collateral estoppel, a party to an action may be prevented from relitigating issues that were actually decided and necessary to the judgment in a previous action. *State Farm v. Century Home*, 275 Or. 97, 550 P.2d 1185 (1976); *Bahler v. Fletcher*, 257 Or. 1,474

P.2d 329 (1970). Plaintiff was convicted in the criminal action of assault and harassment. The victim’s use of more force than was justified to repel the attacker’s criminal acts is not a defense to either of those crimes. It follows that defendant’s response to plaintiff’s actions could not have been an issue that was necessarily decided in plaintiff’s criminal trial. Accordingly, because an aggressor may recover in an action for battery if he proves that the defendant used more force than was justified in repelling the aggression, *Linkhart v. Savely*, 190 Or. 484, 497, 227 P.2d 187 (1951), the trial court erred in holding that plaintiff was precluded from litigating all issues “essential” to his recovery by reason of the judgment entered in his criminal trial.

Reversed and remanded.

Step 1 Read the Entire Case. *Read the entire case with the following general question in mind: “What was decided about which facts?”* This step helps you keep the facts in mind while obtaining an overview of what legal questions were addressed and answered.

Step 2 Look to the Holding. The holding is the application of the rule of law to the legal question raised by the facts of the case. *“What is the court’s answer to the legal question? How did the court apply the rule of law to the legal question(s) raised?”* These are questions to ask when looking to the holding.

In this case, the court stated that the doctrine of collateral estoppel prevents a party from relitigating issues that were actually decided in a previous action. The court noted that the victim’s use of more force than was justified to repel the attacker’s criminal acts is not a defense to assault or harassment. Therefore, the issue of the victim’s use of excessive force to repel the plaintiff’s attack was not litigated in the plaintiff’s criminal trial. The court concluded that the trial court erred in applying the doctrine of collateral estoppel to preclude the plaintiff from litigating the question of the victim’s use of excessive force to repel the plaintiff’s aggression.

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

Part 1 List All Facts Related to the Holding. What facts are possibly related to the holding? Plaintiff filed an assault and battery civil action against defendant to recover damages for injuries sustained in a skirmish with defendant. Plaintiff and defendant became involved in a fight as a result of a dispute over an amount plaintiff was charged for an item. Plaintiff threw the first punch. He claims that defendant responded with excessive force to plaintiff’s aggression. Plaintiff was tried in a separate criminal action and convicted of assaulting and harassing defendant. The trial court ruled that “all material issues of fact were decided against plaintiff at his criminal trial and that he was precluded from relitigating those issues.” All of these facts are possibly related to the holding. Some of the facts of the case, such as what they were fighting about, are clearly not related and are eliminated in this part of step 3.

The trial court in this action ruled that the plaintiff was precluded from relitigating his claim in this action because the issues of fact regarding the fight were decided in the criminal action. The trial court, therefore, dismissed his claim.

Part 2 Determine the Key Facts. Which of the facts listed in part 1 are necessary or essential to the decision reached? Which of the facts, if changed, would change the outcome of the case?

- The trial court’s ruling that the issue of the victim’s response was litigated in the criminal case is clearly a key fact. Had the trial court ruled otherwise, the case would not have been dismissed and the appeal filed. Note that a “fact” in this case is how the trial court ruled.
- The fact that plaintiff was convicted of assault and harassment in an earlier criminal case is clearly a key fact. Had there been no criminal trial, the civil trial court could not have applied the doctrine of collateral estoppel.
- The fact that defendant (victim) used force in response to plaintiff’s aggression is a key fact. Plaintiff’s lawsuit rests upon the nature of defendant’s response.
- The fact that the victim’s alleged use of excessive force to repel an attacker’s acts of assault or harassment is not a defense to those acts in a criminal case is also key. Had this been a defense to those acts, the question of the victim’s use of excessive force would have been litigated in the criminal case and the trial court’s ruling would have been correct. Note that in this case, a key fact is a rule of law—the victim’s use of force in response to assault and harassment is not a defense to either crime.
- The fact that plaintiff threw the first punch in his fight with defendant is probably not a key fact. It is not necessary to establish or satisfy any element of the collateral estoppel issue.

This case is somewhat different from some other cases because the key facts on appeal involve the facts of what occurred between the plaintiff and the defendant, the actions of the trial court, and the law governing defenses to assault and harassment.

Quick References

background facts	113	irrelevant facts	000
ethics	000	key fact(s)	000
facts	000	key facts/client’s case	000
groups of facts	000	key facts/case law	000
individual key facts	000	rule of law	000

Summary

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

Some facts are more important than others, and the most important facts are the key facts—those facts upon which the outcome of the case depends. Key facts are those facts necessary to prove or disprove a claim. A key fact is so essential that if it were changed, the outcome of the case would be different. Key facts are an element of a legal issue, and that role is discussed in Chapters 6 and 7.

There are four recommended steps to follow when determining the key facts of a client’s case.

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

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

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

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

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

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

Step 2 Look to the holding.

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

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

Internet Resources

There are no Web sites dedicated specifically to key facts. However, using Google as a search engine and “IRAC key facts” or “legal analysis and key facts” as a topic, a wide range of Web sites may be found related to the topic of legal analysis and key facts. Most of these sites provide information without charge.

Note that the two major fee-based online research services are Westlaw and Lexis- Nexis. Their publishers closely monitor these services. Information you obtain free from other sites may not be closely monitored and may not be as accurate or have the same quality of material as that obtained from fee-based services. Exercise care when you use material obtained for free.

Exercises

Additional assignments are located on Online Companion and the Student CD-ROM accompanying the text.

ASSIGNMENT 1

Describe in detail the steps for determining the key facts in a client's case.

ASSIGNMENT 2

Describe in detail the steps for determining the key facts in a court opinion.

ASSIGNMENT 3

Identify the background facts in the following cases:

Flowers v. Campbell (Presented in this chapter)

United States v. Leon (See Appendix A)

ASSIGNMENT 4

Identify the key facts in Assignments 5 and 6 in the Exercises section of Chapter 6.

ASSIGNMENT 5

Identify the key facts in each of the hypotheticals presented at the beginning of Chapters 6, 7, and 8.

ASSIGNMENT 6

Identify the key facts in the cases listed in

A, B, C, and E of Assignment 6 in the Exercises section of Chapter 4.

ASSIGNMENT 7

Identify the key facts in Assignments 4, 5, and 6 in the Exercises section of Chapter 13.

ASSIGNMENT 8

Facts: Terry, a bill collector, has been attempting to collect a bill from the client. Every other evening for the past two weeks he has called the client at home after 8:30 p.m. and threatened to call her employer and inform him that she refuses to pay her bills. On every Monday, Wednesday, and

Friday during the two-week period, he has called the client at work. She has repeatedly requested that he quit calling her at work. On the past two Saturdays, he has come by her home and threatened to sue her and throw her in jail.

Rule of Law: Infliction of emotional distress—extreme or outrageous conduct that causes severe emotional distress.

Assignment: The paralegal's assignment is to determine if the actions of the bill collector constitute "extreme or outrageous conduct." Discuss the assignment from the perspective of individual key facts and from the perspective of a group of facts.



For additional resources, visit our Web site at www.paralegal.delmar.cengage.com



Additional assignments are located on the Student CD-ROM accompanying the text.