

# Teaching Statutory Construction Through Reverse Problems and “Why” Problems

by Stephen L. Sepinuck

**L**ike many teachers of statutory subjects, I like to use the problem method in class. By this I mean that most of class time is consumed by discussing fictitious factual scenarios and how the statute under study applies to them. I like this approach because focusing on cases would belie the fact that the primary authority is the statute itself and using problems compels students to confront the statutory text. It also gives me the opportunity to help them develop their statutory interpretation skills.

Many students struggle with statutory interpretation and most find statutes more difficult to analyze than judicial opinions. This is not surprising. After all, in many law schools the bulk of the first-year curriculum consists of common-law subjects, and thus students tend to have more experience with cases than with statutes. Beyond that, cases provide more information than statutes do. Most cases contain three basic components: a story (the facts); a moral or conclusion (the holding); and the reason therefor (the analysis). In other words, they give you a factual context and then tell you what the court is doing and why. Statutes, in contrast, give students only one third of that: the what. They typically do not either illustrate the facts to which they apply or expressly indicate the reasons underlying their provisions. Yet students do not and cannot fully understand a statutory provision until they supply the other two components for themselves. Reverse problems and “why” problems compel them to do this, and thus help demonstrate to them what they should be doing whenever they must analyze a statute.

In reverse problems, students are not provided with a factual pattern and asked to determine how the statute applies. Instead, they simply have the statutory text and are asked to provide an example of the facts to which it might apply. In other words, reverse problems ask students to come up with one of the missing components to understanding: the factual context.

Let me illustrate with some examples. Section 2-719 of the Uniform Commercial Code provides that parties are free to alter the normal remedies provided for in the Code, but that if the parties limit remedies and then circumstances cause the limited remedy to “fail of its essential purpose,” the Code’s normal remedies become available. When we get to this provision, I ask the students to come up with an illustration of when a limited remedy would fail of its essential purpose. Sometimes I do this as part of the assignment for class, sometimes I do it in class, giving students a few minutes either to think about it or to discuss

it with a classmate. Sometimes they flounder but most of the time they work hard at it and even have a bit of fun.

Here are some more examples, all involving the Uniform Commercial Code.

1. Section 2-719(3) provides that an exclusion of consequential damages is presumptively,

but not conclusively, unconscionable with respect to personal injury from consumer goods. I ask them to come up with an illustration of when such an exclusion would not be unconscionable.

2. Section 2-312 provides that all sales of goods include a warranty

of title, unless “specific language or circumstances” give the buyer reason to know that the seller does not claim to have title. I ask them to illustrate circumstances that satisfy this standard.

3. Section 2-316(3) permits the warranty of merchantability to be disclaimed by language which “in common understanding . . . makes plain that there is no implied warranty.” I ask for examples of language which would commonly be so understood.

4. The definition of “inventory” in § 9-102(a)(48) includes “materials used or consumed in a business.” I give them a traditional problem involving a bank’s supply of stationery, toner cartridges, and deposit slips. After they realize that this is inventory despite the fact that it is not held for sale, I ask them for an example of inventory not held for sale that would be far more valuable.

5. Article 9 deals with a variety of situations in which tangible collateral can be transformed. Some generate “proceeds,” some involve “commingled goods,” and some involve “accessions.” All of these terms are defined in the Code. I like to identify for students a hypothetical debtor’s business and the collateral the debtor has offered, then ask the students for an example of each of these types of property.

6. On a slightly more difficult level, Article 9 applies to any transaction, regardless of form, which creates a security interest in personal property. See § 9-109(a)(1). After talking about when a transaction that purports to be a lease is

---

*As with reverse problems, “why” problems compel students to supply one of the critical missing pieces of information they need to truly understand a provision.*

---

*Continued on page 5*

# Teaching Statutory Construction

---

*Continued from page 4*

actually a sale, I talk about a sale of goods with an option to repurchase and ask them to isolate facts that would warrant recharacterizing the transaction as a security device.

Reverse problems help students decipher the text of a statute for themselves. In doing this, reverse problems show students one of the things they should routinely do when first confronting a statute. They thus help students learn to deal with statutes and become more comfortable with them.

“Why” problems work similarly. They ask students to identify the reason or reasons underlying a provision. In other words, they ask why a statute does or does not do something or why it distinguishes between two different situations. As with reverse problems, “why” problems compel students to supply one of the critical missing pieces of information they need to truly understand a provision.

I tend not to use “why” problems when the answer is obvious. I thus would not inquire why environmental laws prohibit dumping hazardous waste or why criminal codes treat murder differently from manslaughter. When I do use them, therefore, they can be very difficult.

For example, Article 9 of the Uniform Commercial Code has many rules on how to perfect a security interest and how to maintain perfection once it is established. One of those rules, § 9-315(d)(2), treats second-generation proceeds differently from first-generation proceeds. To illustrate, if Bank has a perfected security interest in Debtor’s forklift and Debtor trades the forklift for an elephant, Bank’s interest will attach to the elephant and will be perfected. If, however, Debtor had sold the forklift for cash and used the cash to buy an elephant, Bank’s interest would attach to the elephant but would likely become unperfected 20 days after Debtor received it. I ask students why the Code creates this dichotomy. The Code itself of course does not give the reason and neither do the official comments. However, the answer is discernable if the students take the time to think through the issue from the perspective of the relevant party (in this case, that’s not either Bank or Debtor, it’s someone seeking to acquire rights in the elephant from Debtor).

Here are some more examples, again all from the UCC (hey, I love the subject):

7. Section 9-615(a) provides that junior lienors can be paid out of the proceeds of a foreclosure sale but makes no provision for payment of senior liens. I ask students whether this is an oversight.

8. I ask why Article 9 does not indicate that junior liens are discharged when a senior secured party collects on the collateral (such as when the collateral is accounts receivable), as opposed to

when the senior sells the collateral.

9. At the same time as Question 8, I ask why Article 9 provides that a junior secured party who disposes of collateral takes cash proceeds of the disposition free of any claim of a senior secured party, see UCC § 9-615(g), but does not provide a similar rule for when a junior secured party collects on the collateral.

“Why” problems work well only if the students already understand both what the statute does and to what it applies. They therefore should be used last in statutory analysis. They do not provide the last word, however. I always follow them up by reminding students that the specific answer is less important than the process we used to obtain it. They should routinely take the time to identify the reasons that underlie statutory rules because only after they have isolated the rationale will they truly understand the rule. As a bonus, knowing the why makes it easier to remember the rule itself.

---

*Stephen L. Sepinuck teaches at Gonzaga University School of Law. He can be reached at (509) 323-6379 or [sspinuck@lawschool.gonzaga.edu](mailto:sspinuck@lawschool.gonzaga.edu).*