

### 3: Statutory Synthesis

Let's dig a little deeper into statutory synthesis tools and methods.

#### ✓ Example - Mr. Willy Wonka

To give us some context, suppose we have a client, Mr. Willy Wonka, who has come to our law office because he was recently charged with arson. Our factual research revealed the following facts:

- A fire started at the Chocolate Factory, located in Green Bay, Wisconsin, at approximately 1 a.m. on January 30.
- The factory had been closed since 5 p.m. on January 29.
- No one was in the building and no equipment was operating at the time of the fire.
- The fire caused \$1,000,000 in damage to the factory.
- Mary Worth, who lives across the street from the factory, stated that at around 1:30 a.m. on January 30, she saw a man dancing in the street in front of her house. This man was wearing camouflage clothing and was repeatedly shouting, "Burn baby burn!" Mary Worth was shown a photo lineup of potential suspects and identified our client, Willy Wonka, as the man she saw.
- The Fire Inspector found accelerants at several sites around the outside of the factory.
- The Chocolate Factory is insured by Safeco Ins. Company (policy number FA6660297-SW)
- The Chocolate Factory is jointly owned by Wonka and another man, Charlie Bucket.
- Currently, Charlie Bucket is under investigation for improper business practices. The Chocolate Factory's financial records are being audited by Weegocha Auditing Company. The investigation and audit have revealed
  - The Chocolate Factory has been operating at a loss for 3 years
  - \$1,000,000 is currently unaccounted for (or missing) from the financial records
- Both Bucket and Wonka have Preferred Player's cards at LaCasino, a local gambling casino. Preferred Player's cards are issued only to \$1,000,000 players.
- When the police interviewed him, Bucket stated that he was unaware of any plan to set a fire at the Chocolate Factory, and that he would not have consented to such a plan if he were aware of it.

At this point, Wonka has been charged only with arson. There is no charge that he defrauded the insurance company. Based on these facts and the criminal charge, our first step is to locate the Wisconsin Statute that defines the crime of arson. After we locate and read the statute, we need to perform an in-depth micro-synthesis to determine whether it applies to Wonka, and if so, how it might apply to Wonka. In criminal cases, a conviction is appropriate only if each and every one of the statute's requirements are met; therefore, it is very important to know what the requirements, or "elements," of arson are in Wisconsin. Each element will become a sub-issue or sub-question of the broad question of whether Wonka is likely to be convicted of arson.

But first, the arson statute ...

#### 📌 Arson of Buildings; Damage of Property by Explosives

📌 **Wis. Stat. §943.02(1)** Whoever does the following is guilty of a class C felony:

- (a) By means of fire, intentionally damages any building of another without the other's consent or;
- (b) By means of fire, intentionally damages any building with intent to defraud an insurer of that building; or
- (c) By means of explosives, intentionally damages any property of another without the other's consent.

(2) In this section "building of another" means a building in which a person other than the actor has a legal or equitable interest which the actor has no right to defeat or impair, even though the actor may also have a legal or equitable interest in the building. Proof that the actor recovered or attempted to recover on a policy of insurance by reason of the fire is relevant but not essential to establish the actor's intent to defraud the insurer.

Whoa, there are a lot of pieces to this puzzle! There are three different circumstances described. There is a section that defines one of the phrases used in the statute (“building of another”), but there are a lot of other words that aren’t defined – and some of those words could have several meanings. While it’s good to recognize these complexities, let’s not get bogged down by them. Micro-synthesis starts with the actual language of the statute and nothing more.

### Micro Synthesis Tools for Statutes

There are a few options with respect to synthesizing statutes. Which ones you use depends on the type of authority you are trying to synthesize, and which tools work best for you personally. Sometimes it’s helpful to use them all, especially when you are new to synthesizing. The ones we will look at are 5W and 1H (who, what, when, where, why how), and the Statutory Elements approach. Each has advantages and disadvantages, depending on the type of statute you are synthesizing, the complexity of the statute and the complexity of the client’s facts.

### 5W + 1H Approach


This is one of the most basic tools. What does the statute tell us with respect to who, what, when, where, why, and how it applies? These are the “facts” or requirements of the statute. Each factor or requirement must be met for the statute to apply, so it’s important to include every word in the statutes in your 5W + 1H analysis. It’s helpful to copy the statute into a document and then cross out each word as you put it into your 5W + 1H.

When using 5W + 1H, be very careful when dealing with statutes that have:

- “or” requirements – in other words, only one item out of the list must be proven
- Combinations of “or” and “and” requirements – only one item out of the first list of items must be proven, AND at least one other item must be proven
- References to other statutes as part of the requirements
- Exceptions to the general rule – usually indicated by “unless” or “except” or “this statute/section does not apply if”

Our arson statute is a criminal statute, and knowing the typical characteristics of criminal statutes is helpful. Most often, criminal statutes are not specific as to who, when, or where. In Wisconsin, criminal statutes typically have “whoever” or “any person” as the description of to whom it applies. Similarly, Wisconsin criminal statutes are frequently silent as to when (which then means “any time”) and where (as long as it happens in Wisconsin, this requirement is satisfied). Statutes usually are also silent regarding “why” they apply. Criminal statutes are more concerned with “what” actions are prohibited and “how” those actions must be undertaken. With that in mind, let’s take a look at our arson statute again:

#### Arson of Buildings; Damage of Property by Explosives

 **Wis. Stat. §943.02(1)** Whoever does the following is guilty of a class C felony:

- (a) By means of fire, intentionally damages any building of another without the other's consent or;
- (b) By means of fire, intentionally damages any building with intent to defraud an insurer of that building; or
- (c) By means of explosives, intentionally damages any property of another without the other's consent.

(2) In this section "building of another" means a building in which a person other than the actor has a legal or equitable interest which the actor has no right to defeat or impair, even though the actor may also have a legal or equitable interest in the building. Proof that the actor recovered or attempted to recover on a policy of insurance by reason of the fire is relevant but not essential to establish the actor's intent to defraud the insurer.

Who = any person

What = the following actions are prohibited as criminal arson:

- the action of using **fire** to **damage another person's building** [subsection (a)]
- **OR** the action of using **explosives** to **damage another person's property** [subsection (b)]
- **OR** the action of using **fire** to **damage any building to defraud an insurer** [subsection (c)]

When = at any time

Where = in Wisconsin

Why = because the statute says so

How = the action of setting the fire or using explosives must be done

- Intentionally **AND** without the other person's intent [subsection (a) and (c)].
- **OR** With intent to defraud an insurance company that provides insurance coverage for the building [subsection (b)]

When a statute lists multiple ways to meet its requirements, it's important to highlight those differences. Every word matters and each circumstance must be fully and separately analyzed. That's why some parts are highlighted in yellow.

There's one more part of this statute to synthesize: Subsection (2) defines "building of another" and we need to know what this means to fully analyze Subsection (1)(a). Because it is a definition, it doesn't really have its own Who, What, When, Where, Why, and How. The best way to add this information is to put it anywhere you have "building of another" in your synthesis of Subsection (1)(a). Similarly, subsection (2) also explains how to prove intent to defraud an insurer; the best way to add this information is to put it anywhere you have "defraud an insurer" in your synthesis of Subsection (1)(b).

Here is a helpful worksheet you to use with the 5W + 1H statutory synthesis method.

**COMPLETE CITATION OF STATUTE:** Wis. Stat. §943.02(1) (20xx)

**COMPLETE CITATION OF RELATED STATUTES:** Wis. Stat. §943.02(2) (20xx)

QUESTION	STATUTORY REQUIREMENTS
WHO:	any person
WHAT:	<p>(1)(a) and (2) the action of <b>using fire</b> and <b>damaging another person's building</b>. It must be a building in which a person other than the actor has a legal or equitable interest which the actor has no right to defeat or impair, even though the actor may also have a legal or equitable interest in the building.</p> <p><b>OR</b></p> <p>(1)(b) the action of <b>using fire</b> to <b>damage any building and to fraudulently gain insurance money</b>. The insurance fraud can be shown if the actor recovered or attempted to recover on a policy of insurance by reason of the fire</p> <p><b>OR</b></p> <p>(1)(c) the action of <b>using explosives</b> to <b>damage another person's property</b></p>
WHEN:	any time
WHERE:	<p>in Wisconsin</p> <p>in/to a building (a) and (b)</p> <p>on property (c)</p>
WHY:	because the statute says so

QUESTION	STATUTORY REQUIREMENTS
HOW:	(a) or (c) the action of setting the fire/using the explosives must be done intentionally.
	(a) or (c) the action of setting the fire/using the explosives must also be done without the other person's consent
	(b) the action of setting the fire must be done with the intent to defraud an insurance company. The insurance fraud can be shown if the actor recovered or attempted to recover on a policy of insurance by reason of the fire
EXCEPTIONS?	There are no "unless" or "except" statements in the statute

One advantage to using this approach is that it's very easy to put in your client's facts and see how the statute's requirements are or are not met. When adding the client's facts, be very detailed! It's better to put in facts that might not quite matter than to leave any out. You may also find that some client facts overlap or are repeated in more than one category of 5W + 1H. That's perfectly fine! Again, that overlap or repetition results in a deeper, more detailed synthesis that will serve you well when you are ready to do macro-synthesis of the statute and other legal authorities – and even more so when you are ready to begin writing your legal research memorandum. When performing analysis and synthesis, more detail is always better.

Here is an example of how this worksheet might be completed with Mr. Wonka's facts.

**COMPLETE CITATION OF STATUTE:** Wis. Stat. §943.02(1) (20xx)

**COMPLETE CITATION OF RELATED STATUTES:** Wis. Stat. §943.02(2) (20xx)

QUESTION	STATUTORY REQUIREMENTS	CLIENT'S (Willy Wonka's) FACTS
WHO:	any person	Wonka is a person

QUESTION	STATUTORY REQUIREMENTS	CLIENT'S (Willy Wonka's) FACTS
WHAT:	<p>(1)(a) and (2) the action of <b>using fire</b> and <b>damaging another person's building</b>. It must be a building in which a person other than the actor has a legal or equitable interest which the actor has no right to defeat or impair, even though the actor may also have a legal or equitable interest in the building.</p> <p><b>OR</b></p> <p>(1)(b) the action of <b>using fire</b> to <b>damage any building and to fraudulently gain insurance money</b>. The insurance fraud can be shown if the actor recovered or attempted to recover on a policy of insurance by reason of the fire</p> <p><b>OR</b></p> <p>(1)(c) the action of <b>using explosives</b> to <b>damage another person's property</b></p>	<p>(a) A fire was set and the Chocolate Factory was damaged (\$1 million); Bucket is another person who owns the Chocolate Factory</p> <p>(b) at this time, we aren't sure if insurance fraud is involved; the facts do not tell us if Wonka tried to obtain insurance money after the fire</p> <p>(c) explosives were not used, only fire. The Chocolate Factory is a type of property and it was damaged. Bucket is another person who owns the Chocolate Factory</p>
WHEN:	any time	January 30, 1 a.m.
WHERE:	in Wisconsin a building (a) and (b) property (c)	Fire occurred in Wisconsin, at the Chocolate Factory, which is a building and also is a type of property
WHY:	because the statute says so	n/a
HOW:	<p>(a) or (c) the action of setting the fire/using the explosives must be done intentionally.</p> <p>(a) or (c) It must also be done without the other person's consent</p> <p>(b) the action of setting the fire must be done with the intent to defraud an insurance company. The insurance fraud can be shown if the actor recovered or attempted to recover on a policy of insurance by reason of the fire</p>	<p>(a) Accelerants used; Wonka seen dancing at scene of fire yelling "burn baby burn;" motive exists for setting fire (\$ problems). These facts are evidence of intent</p> <p>(a) Bucket denies knowledge of plan or consent; no evidence that Bucket set the fire or otherwise participated in the plan; joint ownership is a legal right (under subsection (2) of statute)</p> <p>(b) this is not clear from the facts and hasn't been charged</p>
EXCEPTIONS?	There are no "unless" or "except" statements in the statute	n/a

## Statutory Elements Approach

The nice part about this approach is that you might have jury instructions to help you with understanding how each element would need to be proven to a jury. This can be especially helpful with criminal statutes. You still want to give meaning to every word and phrase appearing in the statute, but some of the repetition of 5W + 1H is removed. Here's the same arson statute, done using this approach:

**COMPLETE CITATION OF STATUTE:** Wis. Stat. §943.02(1) (20xx).

**COMPLETE CITATION OF RELATED STATUTES:** Wis. Stat. §943.02(2) (20xx)

ELEMENTS	STATUTORY REQUIREMENTS	CLIENT'S (Willy Wonka's) FACTS
ELEMENT #1	(1)(a) and (1)(b) Person uses fire	(1)(a) and (1)(b) A fire occurred at the Chocolate Factory
	<b>OR</b> (1)(c) Person uses explosives	(1)(c) no explosives used
ELEMENT #2	(1)(a), (1)(b), and (1)(c) Person Intentionally damages	(1)(a), (1)(b), (1)(c) Accelerants used; Wonka seen dancing at scene of fire yelling "burn baby burn;" motive exists for setting fire (\$ problems). These facts are evidence of intent The Chocolate Factory (a building and/or some property) was damaged (\$1 million) Motive exists (\$ problems)
ELEMENT #3	(1)(a) a building owned by another. It must be a building in which a person other than the actor has a legal or equitable interest which the actor has no right to defeat or impair, even though the actor may also have a legal or equitable interest in the building.	(1)(a) and (1)(c) Bucket is a part owner of the Chocolate Factory building and any property inside of it  (1)(b) the Chocolate Factory is a building
	<b>OR</b> (1)(b) any building	
	<b>OR</b> (1)(c) property owned by another	
ELEMENT #4	(1)(a) and (1)(c) Other owner didn't consent to damage	(1)(a) and (1)(c) Bucket, the other owner of the Chocolate Factory, denies knowledge of plan or consent
	(1)(b) with intent to fraudulently gain insurance money	(1)(b) at this time, we aren't sure if insurance fraud is involved; the facts do not tell us if Wonka tried to obtain insurance money after the fire
EXCEPTIONS?	There are no "unless" or "except" statements in the statute	n/a

What does our micro-synthesis tell us? Because Wonka did not use explosives, subsection (c) of the statute does not apply. Also, we are not overly concerned with subsection (b) of the statute, because Wonka is not charged with insurance fraud (although he probably could be, based on the facts provided).

Our micro-synthesis also tells us we have more questions to answer before we can advise our client whether it's best to take a plea deal or go to a jury trial:

- What is a “building” – is it a permanent structure or does a tent qualify? Does it have to be someone's home?
- What does “intentionally” mean and how is it proven? After all, no one really knows what was in Wonka's mind as far as what he intended regarding a fire at the Chocolate Factory. We have facts that we think might show intent and motive, but are they enough?
- What does “without consent” mean and how is it proven? After all, no one really knows what was in Bucket's mind as far as what he actually knew or thought about plans for a fire at the Chocolate Factory. We know what he said to the police, but maybe he lied!

And so, the cycle begins again. We have synthesized the arson statute into its requirements or elements, and we need to locate legal authorities that help us understand the meaning of several words/phrases in the statute: “building,” “intentionally,” and “without consent.” to answer that question.

The first and best place to look is in other statutes, preferably ones that are closely related to our arson statute. Are there other statutes in [Chapter 943 of the Wisconsin Statutes, Subchapter I](#) (which covers a multitude of crimes against property) that define any of those terms? Unfortunately, there are not.

What about in Subchapter II, which relates to Trespass (another crime that can be committed against buildings)? Some possibilities exist in §943.13(1e) relating to “dwelling unit” and “implied consent.” We can probably presume that “building” has a broader definition than “dwelling unit” in that a “building” probably doesn't have to be one used or intended to be used as a home, residence or sleeping place; but that doesn't answer the permanent structure vs. tent question. The definition of “implied consent” isn't super helpful beyond what logic tells us – it can consist of conduct or words.

When there are no statutes to help, we need to look to other legal authorities, such as case law, jury instructions, or other secondary sources. We will want to do this separately for each word/phrase (“building,” “intentionally,” and “without consent”) we still need to define. Again, it's best to organize your research notes by creating a separate page for each legal issue – what does “building” mean? What does “intentionally” mean? What does “without consent” mean?

You will go through the process of locating and micro-synthesizing authorities for each requirement or element of the statute that you decide to research. When you are done researching, you should have several research pages documenting your research. In other words, you will have sorted the puzzle pieces into several distinct picture piles, with each pile representing a different part of the puzzle picture.

Once we find those legal authorities and synthesize each of them, the next step will be to perform macro-synthesis to see how it all fits together. And then, we will know all there is to know about the crime of arson against buildings in Wisconsin.

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