

**LEGAL RESEARCH,
WRITING AND
REASONING SUMMARY**



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TOPIC 1 LEGAL RESEARCH

1. Introduction

1.1 Getting Started

Cook et al have stated that the 'single most common mistake' when undertaking legal research is to 'start looking for specific cases or legislation too early'.¹ To avoid making this mistake, remember to follow the steps below:

1.1.1 Analyse the facts

In analysing the facts, Cook et al have suggested using the *SCARP* method.

'Under this method a given set of facts, or a specific incident, is broken down into its separate components. This is a useful means not only of helping to work through a complicated factual problem, but also in identifying the legal issues that need to be researched.'²

'Under the *SCARP* approach, facts can be analysed under four headings:

- **S: Subject matter** - Identify what area of law applies. Is it contract, property, tort, etc? Could more than one area of law be involved?
- **CA: Cause of Action (or defence)** - Identify the facts which give rise to an enforceable claim, or in the case of a defence, the facts which give rise to a basis of non-liability. For example, if you have identified the subject matter as tort law, and believe that negligence may be involved, you must identify facts that establish a duty of care, breach of the duty, and damages. If you are seeking to avoid liability for the tort of defamation, consider whether the defence of truth is available.
- **R: Remedy/Relief sought** - Identify what remedies a court may grant should the action succeed. For instance, in the negligence example above, a court would be likely to award damages.
- **P: Persons involved** - More often than not, this will be quite straightforward. However, it helps to consider whether the persons involved have 'special characteristics which are legally relevant.' Ask yourself: Are they of a

¹ Catriona Cook et al, *Laying Down the Law* (5th ed, 2001), 275.

² Ibid 276.

‘particular type or class, such as medical practitioner’? Do they have ‘special legal status, such as a child’? Are they part of a ‘special legal relationship, such as trustee and beneficiary’?³

1.1.2 Determine the legal issues involved

This step essentially involves identifying the point of law or fact upon which the legal dispute/dilemma hinges.

To illustrate this step, consider the following fictitious legal dilemma:

Mrs Smith lives in a semi-rural house with two cats. The cats have free access into and out of the house via a cat-flap. Recently a cat from a neighbouring property has been seen both on Mrs Smith’s property and inside her house, and has also been seen harassing Mrs Smith’s two cats. Yesterday, the neighbour’s cat came inside Mrs Smith’s house through the cat flap. When Mrs Smith spotted the cat, she tried to scare it away so it would not bully her own two cats. Mrs Jones’ cat ran back outside through the flap. However, in its haste to get outside, it knocked over and smashed a precious antique china vase.

If searching for legal authority that might apply to determine the neighbour’s liability, a search for cases involving cats straying into neighbouring properties may prove fruitless. But there may be cases involving animals straying onto neighbouring properties. And there are certainly cases involving animals causing damage to third parties. Reasoning by analogy, both types of cases might lead a researcher to conclude that the legal question to be asked is what is the legal responsibility of animal owners to take steps to avoid damage to third parties caused by the actions of their straying animals?

1.1.3 Research the legal issues thoroughly

This is where the process of research begins. Do not leave the success of your research up to chance – develop a plan to work methodically through relevant primary sources (cases, legislation) and secondary sources (textbooks, legal encyclopaedias and periodical articles), and stick to the plan!

³ Ibid 277.

1.1.4 Evaluate the results

This step involves sorting the material according to its use in solving the legal problem/dilemma. In determining what is most useful, it is relevant to consider factors such as:

- What jurisdiction the case authority originates from.
For example, a case emanating from the New South Wales Supreme Court will not hold as much authority as a case originating from within the South Australian judicial system;
- The remedies available pursuant to the authority.



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