

Chapter 2: Analysing a Client's Problem

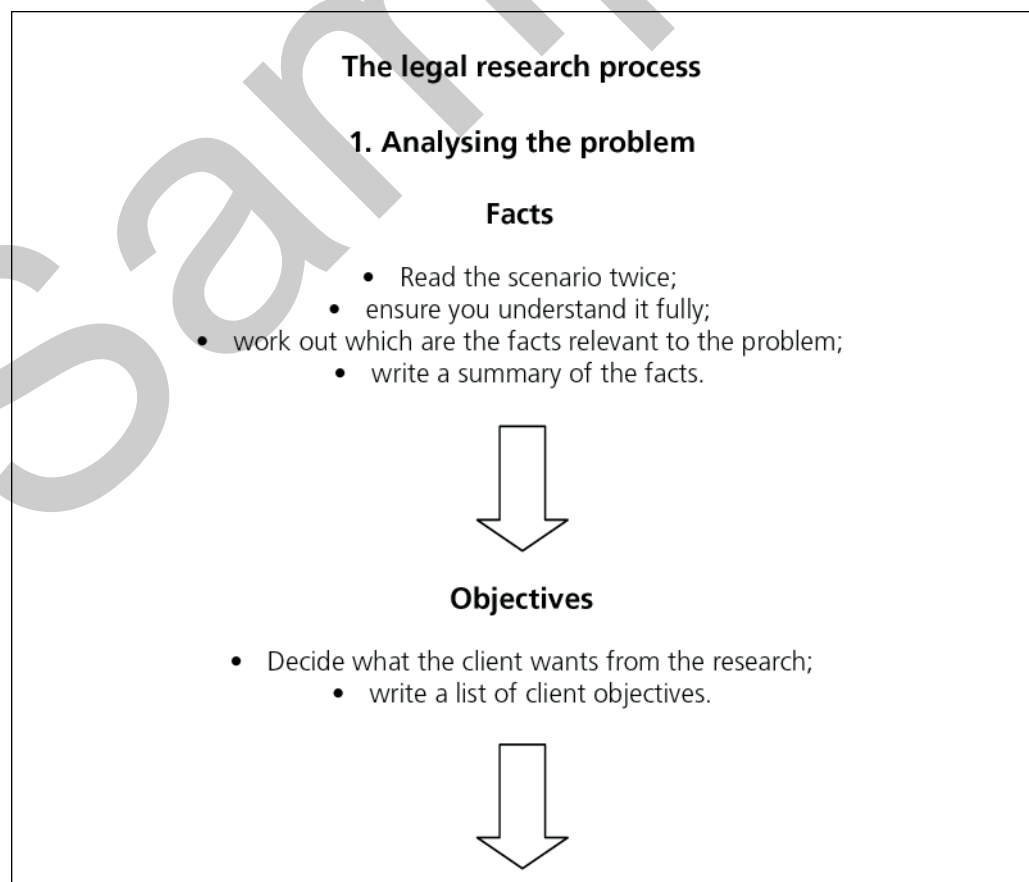
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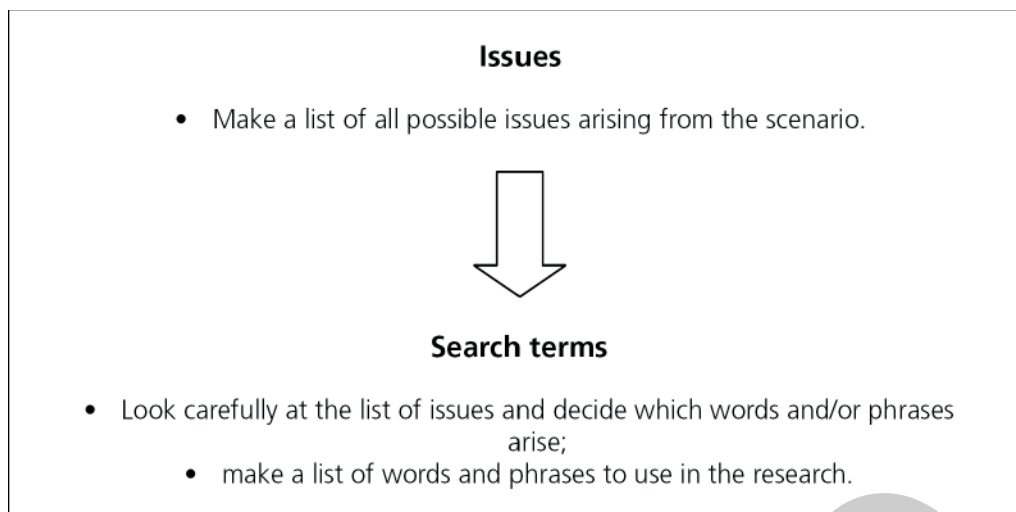
2.1 Introduction

It is rare for a client to come for advice and state "well, I think that the answer to my problem lies within Part 1 Ice Cream Selling Regulations 2009 (SI 666/09)*". Most clients come for advice on a problem and it is for the adviser to recognise which facts are relevant to the law, what the client seeks from the advice to be given and which issues require research. Once these have been identified, the words and phrases can be recognised that begin the research. This is an unfocused problem, and the sort that will be researched in practice.

Do not be tempted to rush over this stage of legal research. If research goes wrong or the answer seems to be elusive, it is often due to insufficient analysis. Analysing the problem can take as long as the actual research and may even help to cut down the amount of time spent looking at research resources. Analysis is an essential step to making sense of the problem and can lead to fewer problems within the process of legal research.

*NB These regulations do not exist.





2.2 Facts



Instructions from Eric Smith

A client attends your office. In a 20-minute interview, the client can give a great deal of information, not all of which will be relevant to the case. Here is a set of instructions from Eric Smith.

"Seeing as it was a lovely day, my wife, Sarah, and I decided to go for a spin around the Cotswolds rather than stay in. We really like the area, especially the look of the stone houses, and we always have a nice cup of tea when we're out. I'm the driver of the family as Sarah prefers to look out of the window. We have a BMW 3 series, which is a few years old but still runs really well.

It was a lovely day and we weren't driving fast. We had taken the B4632 to Chipping Campden as we really wanted to stop at Moreton-in-Marsh for a cup of tea. I was driving at about 30–35 miles per hour as we wanted to enjoy the scenery. We came over a little hill and were horrified to find that there was a car on our side of the road. I braked hard and shouted to Sarah to brace herself. The other driver tried to swerve but he hit me more or less head-on. I had noticed that he was talking on his mobile phone as he drove towards me.

Our airbags really saved our lives. We were both knocked out for a while but apparently passers-by called for the emergency services. We were all taken to hospital in Cheltenham and I was diagnosed with having a broken leg and ribs, and a head injury. Sarah was not quite as badly injured but still had broken bones and a bad gash to the head. We both ended up staying in hospital for a few weeks.

The police charged the driver with dangerous driving, I think, but I didn't really know what was going on as I was in hospital. The driver turned out to be French and his name is René Moutard. The police told me that they went through his mobile phone records and found that he was on the phone at the time of the crash. Mr Moutard pleaded guilty at the Magistrates' Court.

Sarah and I really want to sue this person as we have suffered a lot but we are really worried that we will have to do it in France as that's where he lives. That seems like quite a lot of bother and we are wondering what we should do."

It is important that you recognise which of the facts from a client's instructions are material and relevant. The client does not often realise what is important and so full instructions should always be taken. This is part of the skill of interviewing, where the facts can be amplified, rather than legal research.

Producing a summary of the facts is helpful as it cuts away the unimportant surrounding facts and allows the researcher to concentrate on the really important kernel of the problem. This will also help to reduce the "false starts" or fruitless searching on topics not of interest to the client.

Read the scenario given to you very carefully and then read it again. Ensure that you fully understand the scenario and look up any unfamiliar words in a dictionary. You must ensure that you fully understand the scenario as a whole.

Begin to summarise the facts. Look for anything that is irrelevant or insignificant. You can ask the question: "Does this fact make any difference to this case?" If it does not, consider discarding the fact from your summary. Err on the side of caution.

Summarise further, thinking about what the problem is about and also about what it is that the client wants. Include facts that are material to these ideas. Avoid any temptation to add to or elaborate on the original scenario. It must remain factually accurate. Often, things such as names and dates will be very important and you should be clear on who has contributed to the situation and how.

Looking again at Mr Smith's instructions, we have highlighted in bold what are the relevant and material facts.

"Seeing as it was a lovely day, **my wife, Sarah, and I decided to go for a spin around the Cotswolds** rather than stay in. We really like the area, especially the look of the stone houses, and we always have a nice cup of tea when we're out. I'm the driver of the family as Sarah prefers to look out of the window. We have a BMW 3 series, which is a few years old but still runs really well.

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Sarah and I really want to sue this person as we have suffered a lot but **we are really worried that we will have to do it in France** as that's where he lives. **That seems like quite a lot of bother** and we are wondering what we should do."

These facts can be used to create a summary. Do not simply write out the scenario missing out words. This is not a summary; it is simply the scenario with words missing! Use correct grammar, punctuation and spelling in the summary. Remember that it is a summary; do not make it longer and more elaborate than the original scenario.

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Published in 2019 by:
CILEx Law School Ltd
College House
Manor Drive
Kempston
Bedford
United Kingdom
MK42 7AB

British Library Cataloguing in Publication Data

A catalogue record for this manual is available from the British Library.
ISBN 978-1-84256-1117-1