General Research Plan & Example

Purpose:
The purpose of this guide is to lay out a simple, step-by-step method for conducting legal research. This is not the end-all, be-all of research plans, as there are hundreds of ways to approach any problem. Rather, this is an example of one approach, the one I use most often.

This guide includes an example problem at the end. I did not choose a problem that fit my methodology, but rather chose a random fact pattern then noted each step as I worked through it. The point is to demonstrate my thought process as I apply this method to the research problem I’m dealing with—and that includes altering the plan and hitting dead ends.

Step 1: Dig Through Facts to Determine the Legal Issue
Often in law, you are presented with facts (i.e. my neighbor has large smelly bonfires every night) and not legal issues (my neighbor is violating nuisance law by obstructing the reasonable and comfortable use of my property). Unfortunately the law is organized according to legal issues and not facts. It is your first task in any legal research problem to convert the facts you are given into a legal issue.

How To:
Unfortunately, this part of legal research is difficult without any previous experience with the law, but luckily you will usually have some idea what you’re looking for thanks to three years in law school plus the bar exam. If not, honestly, the best resources for determining the legal issue in your fact pattern are your colleagues or a law librarian. If you can at least narrow down your topic enough to know which area of law covers it (i.e. that nuisance is a tort claim) that’s usually enough to get you started.

Step 2: Determine Terms of Art
Once you determine the legal issue, you need to figure out the language used to describe it, known as the “terms of art.” Conducting legal research without these terms can be difficult. For
example, I recently researched a question regarding what jurisdiction a lower court retains when a case is on appeal to a higher court. For example, can a lower court continue to make decisions regarding the case (say, by amending a judgment) while the case is pending on appeal? As you can imagine, I didn’t get far with such generic search terms as “court,” “appeal,” and “jurisdiction,” which are in nearly every opinion. But once I discovered the terms of art for this particular situation are “divestiture” and “functus officio,” my search become much easier.

**How To:**
One of the best resources for determining the terms of art is by using a secondary source on the topic of your legal issue. This can be a legal encyclopedia’s entry on your topic, a nutshell, a treatise, etc. I tend to prefer a nutshell if one’s available, because they’re quick and easy-to-read and at this stage I am just looking for a general overview of the law and the language used to describe it.

If you’re looking for something very specific look in the index, or, if you need something more general, browse the table of contents until you find a relevant topic. If you don’t have a clue which secondary source is best for your topic, just ask a librarian—we know these things.

**Step 3: Determine Jurisdiction and Source of Law**
Next you must determine the relevant jurisdiction and the source of the applicable law—i.e. is it a state or federal? If state, which state? And source of law—is this issue guided by case law only? Statute? Regulation?

**How To:**
While you still have that secondary source, take a closer look and see if it drops any clues as to the state and federal question, or the statute/regulation/case law-only question. The resource will probably not tell you the specifics of a state law (unless of course, you’re in a state-specific resource, such as *Strong’s North Carolina Index*), but it will usually tell you whether there’s relevant federal law, and whether it falls under the purview of a federal agency. Whether there’s
a relevant state statute might not be as obvious, but don’t worry too much yet. This step overlaps with the next step.

**Step 4: Find the Law—Statutes**

Now that you roughly understand the legal issue presented, it’s time to find the applicable law in your jurisdiction.

**How To:**
The next step is to look in the index of your state’s statutes. In North Carolina, that’s the *North Carolina General Statutes*. You now know the legal issue and the terms of art used to describe it, so use the index at the end of the statute set and look up your topic (or search the relevant database on Westlaw or LexisNexis). It should direct you to the relevant statute.

The trick here is not to kill yourself searching—not yet, in any case. The reason being that there very well could not be a statute, and looking for something that doesn’t exist can drive you crazy. Instead, do a thorough-but-not-insane search using your terms of art and with your new understanding of how your legal issue is organized (for example, if you were researching the vicarious liability of an employer for the acts of his employee, then you would know enough now from your secondary source research to look under the large heading “Labor and Employment” in the statutes index.)

The reason there is no need to drive yourself crazy (yet, at least) is that you still have case law to look into, and case law, statutes, and regulations, all tie into each other. If there is a recent, relevant case on your legal issue than it makes sense that the court would mention the statute in its opinion. This is not a failsafe, as sometimes statutes can particularly address one fact pattern but not another, relevant one. For example, North Carolina has a statute governing some nuisances, like poisonous snakes, but not others, like enormous external speakers. Therefore if you were looking for a North Carolina statute dealing with nuisances, if the case you found dealt with large speakers, the nuisance statute might never be cited even though the case talks about nuisance law.
Even if there is a statute, and you do miss it this first time around, the hope is that in the course of your case law research you will gain an even greater understanding of your legal issue which will, in turn, help you to conduct a more effective statute search when you try again later. For example, you may learn where nuisance laws are organized in the NC General Statutes generally, so you’ll know exactly where to look for your specific fact pattern.

You may do the case law research before statutory research, if you prefer. However, I like to look for the statute first because if there is a statute, it will lead you to relevant cases through its annotations. Those cases will then give you the relevant topic and keynumber in their headnotes so you can pull all the relevant cases very quickly. You can also use the citation to the statute as a very accurate search term in a Westlaw or Lexis search when you are looking for cases.

**Step 5: Find the Law--Cases**
Assuming you don’t find the magic statute (or even if you do, since you will still have to do case law research—the methodology will just be different), the next step, is to conduct case law research in your jurisdiction.

**How To:**
This is best done using the keynumber system created by West, whether you conduct it in print or on Westlaw. The reason being that the keynumbers are arranged by legal issue, which is exactly how you have arranged your legal question—into a legal issue. You use the digest’s Descriptive Word Index to look up the terms of art for your legal issue. That will provide you with a topic and keynumber. Then look at the outline of that topic at the beginning of that topic’s section in the digest. Viewing the outline will allow you to pick the most relevant keynumber (the one you were given by the index may not be the absolute best). This, in turn, will send you to relevant case law on your topic.
Step 6: Putting It All Together

After reading the relevant statutes and cases, it’s time to formulate your best interpretation of the law on this topic in your state, then apply those rules to your fact pattern to guess how the court would rule on your issue. You then formulate your arguments, based on the cases and statutes, for why the court should rule in your favor.

How To:

This is another section where you really just need to use your own brain power and legal expertise. After three years in law school you should be able to apply a law to a set of facts and make an argument. If you can’t…well, that’s not really a research problem.

Step 7: Update your Research

After finding all these statutes and cases, you want to make absolutely sure that they are still relevant. Not only is it embarrassing to use a case that’s been overturned or a statute that’s been superseded, but it’s actually malpractice.

How To:

Use Westlaw’s Keycite or LexisNexis’s Shepard’s to update your research

Example Problem

Fact pattern:

Bob is mad because his neighbor Jill constantly burns big bonfires. The bonfires are on her property, but are very close to his house. Bob doesn’t feel endangered by the fires, but is tired of everything he owns smelling like smoke. Does he have any grounds to make her stop? There isn’t an HOA or any local ordinances that prohibit the bonfires.
Step 1: Dig Through Facts to Determine the Legal Issue.

So what is the legal issue? A rookie might jump in and try to natural-language search “bonfire smoke is annoying” on Westlaw or Lexis, but we’re way too savvy for that and know we need to identify the issue and not the facts. This is the research step that relies on your general knowledge of the law. I haven’t dealt with this topic specifically, but vaguely remember my professor in Torts (all those years ago) saying something about people not being able to use their property in a way that irritates their neighbors, and that it was called a nuisance.

I haven’t studied nuisance law since law school, so to brush up on my knowledge the next place I’m going to go is to a secondary source. Because nuisance a narrow, well-known topic, I figure an encyclopedia is probably a better resource to use than a treatise or a nutshell (although you certainly can). As you know, there are national encyclopedias (C.J.S. and Am. Jur.) and a state-specific encyclopedia for North Carolina, called Strong’s North Carolina Index. Since this case is in North Carolina, I go to Strong’s. I look up “nuisance” in the index and see that Strong’s has a long entry on the topic. I flip to that section and get a nice summary of the black-letter law on the topic as well as citations to relevant cases. I also check the pocket part to see if there have been any recent changes (either more cases or new statutes or amendments).

Step 2: Determine Terms of Art

While I’m reading the entry on nuisance in Strong’s I keep my eyes peeled for any special terminology. There isn’t any that seems to apply, except I see the phrase “pollution.” Not a unique word, but I make a note that that’s how “smoke” is likely to be described in the area of nuisance law.

Step 3: Determine Jurisdiction and Source of Law

We already know the jurisdiction (North Carolina) from the fact pattern. Strong’s makes no mention of federal law or any statutes particular to my specific issue. That suggests that my issue is a state, common law issue.
Step 4: Find the Law—Statutes
Because Strong’s did not mention a relevant statute, I’m pretty confident there isn’t one. However, just to be safe I decide to take a quick skim of the general statutes. The index has an entry for “nuisance.” I skim it and it has one entry on fires, but it’s about prescribed fires and deals with public nuisances (from the encyclopedia entry, we know our issue deals with a private nuisance claim). I feel comfortable that there’s probably not a statute that deals with the nuisance of a neighbor’s bonfire and move on.

Step 5: Find the Law—Cases
The encyclopedia is a huge help because I can use the cases it supplied in order to find the relevant topic and keynumber. I can then use that topic and keynumber to find all the relevant cases.

First, I choose a couple of cases that look particularly on point. One I choose is Broadbent v. Allison, 626 S.E.2d 758 (2006), because it talks about the requirements of a nuisance generally, and is recent. Another case I chose is Causeby v. High Penn Oil Co., 93 S.E.2d 79 (1956) because, while an older case, it deals specifically with air pollution. I then pull the cases in a West reporter or on Westlaw, and skim their headnotes to find the one that best addresses my issue (what the requirements are for something to qualify as a nuisance, especially in the case of air pollution). In Broadbent, a relevant headnote states this: “Nuisance 4: In order to establish a claim for private nuisance, a plaintiff must show the existence of a substantial and unreasonable interference with the use and enjoyment of its property.” This keynumber will likely lead us to cases that state the elements of a nuisance claim in North Carolina.

I then looked at Causeby, but, unfortunately, it appears to be a dead end. I was hoping it would lead me to a headnote that deals specifically with the requirements of an air pollution nuisance, but it doesn’t. I will still hold on to this case, since the facts seem like they sort of fit mine, but I’ll leave that trail for now.
I then use the digest (either online or in print) to pull up the topic and keynumber from *Broadbent* and note the relevant cases. The goal here is to find cases that best fit my fact pattern. It’d be ideal, obviously, if I found a case with a stinky-bonfire-having-neighbor (though the answer is rarely that simple). Doing this search on Westlaw is helpful because you can do a keyword search within all the cases in a keynumber. So, I could pull up all the North Carolina nuisance cases, then search within them for keywords “(fire or smoke) and pollution” and see if I can find any that deal with a similar issue. It’s a long shot, but it takes about five seconds, so why not? As predicted—nothing.

The next thing I do is look at the keynumber outline to see if there are any others that might cover my issue. The outline is located at the beginning of the Nuisance section in the print digest or on Westlaw. I then browse it for other applicable keynumbers. For example, Nuisance 1 “Nature and elements of private nuisance in general” looks likely, as do Nuisance 3 “What constitutes a nuisance in general,” and Nuisance 3(3) “Noise and pollution of atmosphere in general.” I then turn to those sections in the digest and scan all the cases, noting any that look particularly applicable. I then skim the best looking cases and set them aside.

**Step 6: Putting It All Together**

After browsing all these cases, it seems that the general rule in NC is “To recover from nuisance, plaintiffs must show an unreasonable interference with the use and enjoyment of their property,” *Whiteside Estates, Inc. v. Highlands Cove, L.L.C.*, 553 S.E.2d 431. Reading this, I would tentatively conclude that Bob may have a nuisance claim—Jill’s constantly burning fires on the property line such that Bob’s house stinks of smoke may be seen as an unreasonable interference in Bob’s enjoyment of his property. Of course, you would want to back this up by actually listing examples of cases that were the most similar. You would especially want to focus on what the courts have considered to be reasonable or unreasonable interference with a neighbor’s property, and what tests they use to determine “reasonableness” in this context. I’m not going to go into all that, because that’s mostly analysis at this point, and not research, but hopefully you get the idea.
Step 7: Update your Research

When you settle on the cases you want to use in your memo/brief/paper, you then want to update them using Keycite or Shepards, so ensure that they are still good law (this might also point you to some other helpful cases you missed, since the results list related cases). Then you draft up your memo, and you’re done!

In Conclusion

Step 1: Dig Through Facts to Determine the Legal Issue.
Step 2: Determine Terms of Art
Step 3: Determine Jurisdiction and Source of Law
Step 4: Find the Law--Statutes
Step 5: Find the Law—Cases
Step 6: Putting It All Together
Step 7: Update your Research