COURSE GUIDE

COURSE CODE: JIL 447

COURSE TITLE: LEGAL RESEARCH METHODOLOGY AND PROJECT WRITING 1

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1.0 INTRODUCTION

JIL 447 intends to acquaint the students of law with scientific methods of inquiry into law. It also intends to make them familiar with nature, scope, and significance of legal research. In addition, it endeavors to make them aware of role of legal research in the development of law and legal institutions, in particular and socio-economic development of the country in general. With these objectives, the course addresses to sources, categories and types of legal research. It focuses on legal research methods and tools. It highlights different dimensions and tools of doctrinal legal research as well as non-doctrinal legal Research or socio-legal research. In other words, the course strives to instill in the law students basic skill of identifying research problems, planning and executing legal research projects and of appreciating the problems associated therewith. It aims at instilling in them basic research skills so that they can plan and pursue legal and socio-legal research in future.

2.0 Justification

Law does not operate in a vacuum. It has to reflect social values, attitudes and behavior. Societal values and norms, directly or indirectly, influence law. Law also endeavors to mould and control these values, attitudes and behavioral patterns so that they flow in a proper channel. It attempts either to support the social system or to change the prevalent social situation or relationship by its formal processes. Law also influences other parts of the social system. Law, therefore, can be perceived as symbolizing the public affirmation of social facts and norms as well as means of social control and an instrument of social change.

All collective human life is directly or indirectly shaped by law. Law is, like knowledge, an essential and all pervasive fact of the social condition. No area of life-whether it is the family or the religious community, scientific research is the internal network of political parties-can find a lasting social order that is not based on law. A minimum amount of legal orientation is indispensable everywhere.Law is not, nor can any discipline be, an insular one. Each rule postulates a factual situation of life to which the rule is to be applied to produce a certain outcome.

Law, in essence, is a normative and prescriptive science. It lays down norms and standards for human behavior in a set of specified situation(s). It is a 'rule of conduct or action' prescribed or formally recognized as binding or enforced by a 'controlling authority'. It operates in a formal fashion. It enforces these prescribed norms through state's coercive powers. However, the societal values and patterns are dynamic and complex. These changing societal values and ethos obviously make the discipline of law dynamic and complex. Law, therefore, has to be dynamic. Law has acquired a paramount significance in a modern welfare state as an effective instrumentality of socio-economic transformation. It indeed operates as a catalyst for such a transformation. Such a complex nature of law and its operation require systematic approach to the 'understanding' of 'law' and its 'operational facets'. A systematic investigation into these aspects of law helps in knowing the existing and emerging legislative policies, laws, and their social relevance. It also enables to assess efficacy of law as an instrument of socio-economic changes and to identify bottlenecks, if any.

3.0 COURSE OBJECTIVES

The aim and objective of this course is to give NOUN Law students a theoretical basis for the understanding of Legal Research Skill and Methodology, thereby preparing them for a more complex and practical based knowledge of research writing and dissertation in their undergraduate and post-graduate academic career. NOUN Law Students should be able to have a basic understanding of the relation of law to society, both in terms of its nature, dynamics and purpose: have a theorisation of law and social change, hopefully with specific reference to Nigeria, and: be able to decipher the elements that make law more efficient and: understand its attributes as a social control tool **and** have a practical based knowledge of how to do and publish a research in Law.

4.0 WORKING THROUGH THE COURSE

To complete this course you are required to read the study units, recommended text books and other materials. Each unit contains self –assessment exercises and at tutor decided time in the course, you are required to submit assignment for assessment purposes. At the end of the course is a final extermination. The course should take you 14 weeks (Revision and extermination inclusive in total to complete. Bellow you will find list of all the components of the course, what you have to do and how you should allocate you time to each unit in order to complete the course successfully.

5.0 COURSE MATERIAL

The major materials to be used for the course are:

- This Course Guide;
- Study Units;
- Text Books;
- Assignment Files; and
- Presentation Schedule

In addition, you must obtain the textbooks as they are not provided by NOUN. You are required to obtain them in your own responsibility. You may purchase your own copies. Your tutor will always be available should you have any challenge in obtaining the textbooks.

6.0 STUDY UNITS

There will be 3 Modules in this Course which are sub-divided into 9 units, and they will be distributed as follows;

Module 1: Introduction to legal Research
Unit 1: The Need for Legal Research
Unit 2: What is Research?
Unit 3: Types and purpose of Research

Module 2: General Research Process
Unit 1: Training the Researcher
Unit 2: Choosing the Topic
Unit 3: Major Stages in Legal Research

Module 3: General Research Planning
Unit 1: Research Designs
Unit 2: Research Tools
Unit 3: Research Model

Note; Most units contains a number of self test questions. These questions generally test your understanding of the topics you have just covered by requiring you to apply what you have read in some practical ways. This will definitely help you to gauge you progress and to reinforce your understanding of the materials. Together with the TMAs, these exercises will assist you in achieving the stated leaning objectives of the individual units and of the course in general.

COURSE MARKING SCHEME

The following table shows how the examination will be graded for the guidance of the student.

Continuous Assessment -	30%
Final Examination -	70%
Total -	100%

7.0 REFERENCES

Some of the important materials that will be used throughout the course are listed below:

- Chegwe Emeke N. *Legal Research Methodology and Project Writing* (Ekpoma- Nigeria:Abrose ALLI University Press,2016)

- Yehezkel Dror, Law and Social Change, 33 *Tul LR* 749 (1959)
- A V Dicey, *Lectures on the Relation between Law and Public Opinion in England during the Nineteenth Century* (MacMillan, 1905), pp 1-42
- Vilhelm Aubert, Some Social Functions of Legislation, 10 *Acta Sociologica* 99 (1966)
- Julius Stone, *Social Dimensions of Law and Justice* (Stanford University, Stanford, 1966)
- W Friedmann, *Law in a Changing Society* (Stevens & Sons, London, 2nd edn, 1972), chap 1: the Interaction of Legal and Social Change
- Kothari, C R, *Research Methodology: Methods and Techniques* (Wishwa Prakashan, New Delhi, 1990)

- . Harvard Law Association, *A Uniform System of Citation (the Bluebook)*, (Latest Edition)
- . Faculty of Law, Addis Ababa University, *Book of Citation* (Unpublished, 1965)
- Various national as well as foreign laws and court cases used as examples.
- Various books, journals….. Used as examples to show citation rules

8.0 ASSIGNMENT FILE

In this file you will find the details of the work you submit to your tutor for marking. The mark you obtain for these assignments will count towards the final mark you obtain for this course. Further, information on the assignments will be found in the assignment file itself.

9.0 Assessment

There are two aspects of the assessment of this course; the Tutor-Marked Assignments and a written examination. In doing these assignments, you are expected to apply knowledge must have acquired from the Course. The assignments must be submitted to your tutor for formal assessment in accordance with the deadlines stated in the presentation schedule and the assignment file. The work you submit to your tutor for assessment will count for 30% of your total score.

Tutor-Marked Assignment

There is a Tutor-Marked Assignment at the end of every unit. You are required to attempt all the assignments. You will be assessed on all of them but the best 3 performances will be used for assessment. The assignments carry 10% each.
When you have completed each assignment, send it together with a (Tutor Marked Assignment) form, to your tutor. Make sure that each assignment reaches your tutor on or before the deadline. If for any reason you cannot complete your work on time, contact your tutor. before the assignment is due to discuss the possibility of an extension. Extensions will not be granted after the due date unless under exceptional circumstances.

Final Examination and Grading

The duration of the final examination for JIL 447 is three hours and will carry 70% of the total course grade. The examination will consist of questions, which reflect the kinds of Self Assessment Exercises and the Tutor- Marked Assignment

you have previously encountered. All aspects of the course will be assessed. You should use the time between completing the last unit, and taking the examination to revise the entire course. You may find it useful to review your Self Assessment Exercises and Tutor-Marked Assignments before the examination.

Course Marking Scheme

The following table lays out how the actual course marking is broken down.

Assessment Marks
Assignments 1-4 (the best three of all the assignments submitted)
Four assignments, marked out of 10% Totaling 30%
Final examination 70% of overall course score
Total 100% of course score.

10.0 SUMMARY

By trying out all of the above, we are quite confident that you will not only have a sound understanding of Legal Research Methodology and Project Writing, you will also be able to pass your exams with ease.

We wish you success with the course and hope that you will find it both interesting and useful.

MAIN COURSE

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LEGAL RESEARCH: METHODOLOGY& PROJECT WRITING 1

MODULE 1
History of Legal Research
Unit 1: Historical Background of Legal Research
Unit 2: History of Legal Research in Nigeria
Unit 3: Legal Research in NOUN

Unit 1
Historical Background of Legal Research

CONTENT

1.0 Introduction
2.0 Objectives
3.0 Main Content
    3.1 Historical Background
4.0 Conclusion
5.0 Summary
6.0 Tutored- Marked Assignment
7.0 References/Further Reading.

1.0 INTRODUCTION

Legal researchers have always struggled to explain the nature of their activities to colleagues in other disciplines. Becher's work continues to represent an accurate account of how academic lawyers are viewed by their counterparts. They have much work to do in this respect. He found that academic lawyers were regarded as not really academic…arcane, distant and alien; an appendage to the academic world…vociferous, untrustworthy, immoral, narrow and arrogant. Their research fared no better, being dismissed as "…unexciting, uncreative, and comprising a series of intellectual puzzles scattered among large areas of descriptions".

This courseware therefore presents a welcome opportunity to explain the actual nature of legal research to researchers from other components and disciplines within the built

environment. The built environment is usually considered to be an interdisciplinary field linking the disciplines of management, economics, law, technology and design. The field as a whole can benefit from an improved understanding of each of its component discipline. The current courseware aims to assist this process in the context of the law discipline.

2.0 OBJECTIVES

At the end of this introductory unit, students should be able to know the historical background of legal research, especially in Nigeria.

3.0 MAIN CONTENT

3.1 Historical Background

The idea that law students need formal instruction in legal research may meet with little argument today from law librarians, practicing attorneys, and even some law faculty, but a century ago it was considered revolutionary. Lawyers and law teachers of the early 1900s were not far removed from the time when a lawyer was expected to own and be familiar with all the materials needed for the practice of law.' As legal issues became more complex, and the quantity of 'legal materials increased, formal instruction for lawyers became accepted, and attending a law school became the primary method of preparing for a legal career. While there has been growing agreement that law students need to learn legal research skills, there is no unanimity on what should be taught, how the material should be taught, or who should do the teaching. It is our thesis that academic law librarians should assert their role in legal education. Because they have devoted their professional lives to mastering legal bibliography and to refining research skills, librarians are uniquely qualified to teach legal research. For example, the University of Richmond Law School, the legal research program was designed and developed by the professional library staff and is currently taught by the librarians. The program is offered as one component of the first-year course in Legal Writing.

Historically, legal training did not include formal training in legal research. Prospective lawyers were trained apprentice-style and learned what they needed to know about research by following the example of the practitioners under whom they worked. This form of teaching was not feasible in the law school setting; consequently, other methods needed to be found. In 1820, Harvard Law School began dealing with the need of lawyers to "find the law" by creating a system of student-organized law clubs that provided

instruction in legal research. These clubs were assisted by law school library staff, although it is unclear when library staff began providing instruction or how formal the instruction was. Other institutions no doubt relied on library staff and other faculty to provide individual instruction as needed.Other than sporadic lectures, little was provided in the 'form of organized instruction until after the twentieth century. Then, the push toward research instruction was led by the publishing companies. Between 1902 and 1916, West Publishing Company and, to a lesser extent, Lawyers' Co-operative Publishing Company instituted research/brief writing contests, published texts on legal research, sent representatives to lecture on legal research at law schools, and offered training for legal research instructors. Largely as a result of the push by the legal publishers and popular demand by students, at least twenty-nine law schools offered courses in legal research by 1917 in the US. By 1922, twenty-two of the over fifty member schools in the Association of American Law Schools offered legal research courses. How many of these were taught by librarians is not clear. What is clear from the early sources is that librarians were recognized as being among the most qualified instructors available.'

One early program in legal research taught by a librarian was at Columbia University Law School. The program started as three lectures offered in 1912 by the law librarian, J. David Thompson. In 1915, the new law librarian, Frederick C. Hicks, gave a series of six voluntary, no-credit lectures in the fall semester. The lectures, while considered an experiment, were an immediate success and prompted Hicks to offer weekly seminars on legal research. Over one hundred students signed up for these sessions. The students were divided into eight groups, which met in the law librarian's office through the end of the semester. The weekly seminars resumed in the spring semester; six sessions per week met at the Law Librarian's convenience. Sixty-five students participated in the spring semester sessions. The method used to instruct these students was not simple legal bibliography, but was based upon the discussion and use of specific case problems. Each student was given an individual problem to work on for the next week's session, and sample problems from the week before were discussed in the group meeting. This technique was extremely labour intensive, but it met students' demand while also clearly showing the library staff to be a valuable source of research guidance.

By the late 1940s and early 1950s, many articles had been published on how legal research was taught in particular law schools or on how legal research should be taught." These articles show the changing role played by librarians in the research courses. Many do not even mention librarians, and those that do tend to relegate librarians to very minor

roles. For instance, the description of the University of Chicago program points out that during the first four months "any question about the library is a good question, but that thereafter knowledge will be presumed," without ever mentioning a librarian's participation in their program. At Northwestern University, one article stated that "the Reference Librarian obviously makes a more or less constant contribution as a consultant and advisor concerning the use of library materials.' In another article on the program, however, the same author wrote that students "may" consult with the reference librarian and that such a consultation "usually, but not necessarily, results in a screening of the requests for personal guidance,... so that for the most part the simpler problems are disposed of in the library and only the more difficult ones reach the instructor."
Only one article was about a program conducted by a law librarian, the program at Montana State University. The course was called "Orientation, Ethics and Bibliography." Regrettably, the description of the program is very brief, but it does indicate that the legal bibliography portion was taught using a combination of lectures, assigned readings, and a series of problems. The students worked on the problems in groups and their papers were graded as either acceptable or unacceptable.

4.0 Conclusion.

Being able to research in an effective manner is an essential skill whether you are a student or in practice. The primary aim of conducting clear and methodical legal research is finding the answer to a legal question in the most time effective way and knowing that you have searched in all the relevant sources. Being able to show that you have good legal research skills can help in securing training contracts in law firms or funding for study or research projects. In legal practice it can also help to show any client that your work is accurate and that it is value for money

5.0 Summary.

In this unit, you have learnt the historical background of legal research, especially in the United Kingdom from whence Nigeria borrowed its legal system. You are also able to decide which is the proper Unit in a University to teach Legal Research Methodology and Project Writing because of the augment presented in this Unit.

6.0 Tutor-Marked Assignment

What reason accounted for the law school as the primary method of preparing for a legal career

7.0 References/Further Reading.

Chegwe Emeke N. *Legal Research Methodology and Project Writing* (Ekpoma-Nigeria:Abrose ALLI University Press,2016)

Unit 2
History of Legal Research in Nigeria

CONTENT
1.0 Introduction
2.0 Objectives
3.0 Main Content
4.0 Conclusion
5.0 Summary
6.0 Tutor- Marked Assignment
7.0 References/Further Reading.

1.0 INTRODUCTION

In this unit, the history of legal research in Nigeria is explained in detail.

2.0 OBJECTIVES

At the end of this introductory unit, students should be able to know the history of Legal Research in Nigeria.

3.0 MAIN CONTENT

Legal education in Nigeria is traced to the history of the profession in England. Throughout the colonial period there was no institution for the formal training of lawyers. The Chief Justice only empowered fit and proper persons with basic education and some knowledge of English Law and practice as attorneys. These local attorneys as they were called were people who went to Great Britain to acquire legal education in the offices of legal practitioners over there. By 1913, about 25 overseas trained lawyers had enrolled to practice in Nigeria. And in that year, the Chief Justice stopped granting licenses to unqualified persons to practice as attorneys. It is important to note that up till 1945, lawyers trained in Britain had no law degree, let alone knowledge of legal research and methodology. No British university was offering a law degree at that time. To qualify as a barrister, a person only needed to join one of the four inns of court, read for the Bar

exams, keep twelve dining terms (which was compulsory), and the be called to Bar without necessarily obtaining a law degree. These and other challenges to Nigeria inherent in British trained lawyers led to the establishment of the Unsworth Committee in 1959 by the Federal Government of Nigeria. Based on the recommendation of the committee, the University of Nigeria, Nsukka established the first Faculty of Law in Nigeria in 1962.

From 1962 up till 1974 when the National University Commission (NUC) was established and beyond, no university in Nigeria offered legal research and methodology as a course of study in its curriculum.

The first effort by any Nigerian author to produce anything on **Legal Research and Method** as a course of study in any Nigerian university was by Prof. M.O.U. Gasiokwu. He published a book in Methodology titled "*Legal Research and Methodology: The A – Z of Writing These and Dissertation in a Nutshell*". The writing of the book was commissioned in 1985 by the Department of Public and Private Law, University of Jos, then under the headship of Prof. Jacet Machowski, a Polish professor of International Law.

With the permission of Prof. Ebere Osieke, who was then the Dean of Law of the University of Jos, the first manuscript was produced and passed to the various lecturers in the faculty for review and assessment. The academics in the faculty made very constructive contributions and suggestions. The final draft of the manual was subsequently presented to the faculty board of Law, University of Jos, were it was adopted as a standard textbook for the students in the faculty as a guide on how to carry out research and write their theses. Thus began the teaching of legal research and methodology as a course in Nigerian universities. It is noteworthy that up till then many students of faculties of Law in Nigeria did not see the need for any course of study in legal research and methodology, neither did the Law programmes in those days entail the writing of long essays or 'project work' as it is popularly known in Nigeria.

The first commercial production of the book was mimeographed, entitled, *Research Project in Law: The A – Z of Writing Theses and Dissertations*. The book has since been reviewed by the author, and the material content has been greatly enhanced. The new title is therefore a modification intended to reflect the addition that has been made to the original edition.

The book initially assessed and highly evaluated by the academic staff of the Law faculty, proved to be of great utility not only for law students of the University of Jos, but for so many other law faculties in Nigeria which have adopted it as their standard text for the teaching and learning of Legal Research and Methodology. While commending the effort of the author of this publication, I do not pretend to be writing in a new area of law. All I have done is gather all the necessary information for the beginner and also old hand in legal research projects. I thank Prof. Gasiokwu for allowing me adopt, line, stock and barrel, some portions of this book, for which he has been duly acknowledged.

4.0 Conclusion.

The development of the law will to a great extent be subjected to obsolete and archaic postulation and outdated rules that may be out of tune with those the laws are supposed to govern if there is no consistent research to evaluate its operation within a particular socio-legal system. Therefore, the essence of a legal research. Study shows that legal research are still much being conducted using doctrinal method .which is not empirical . Analysis of statistical data or qualitative methodology is often viewed as the concern of the pure scientist rather than in the humanities. In conclusion, it is observed and recommended that the need to embark on empirical legal research methodology cannot be over emphasized as it is the only method by which the sociological effect of the law could be attained in the 21st century.

5.0 Summary

In this unit, you have learnt about the history of Legal Research in Nigeria.

6.0 Tutor Marked Assignment

1. Give a brief summary on the history of legal research in Nigeria.

7.0 References/Further Reading.

Chegwe Emeke N. *Legal Research Methodology and Project Writing* (Ekpoma-Nigeria:Abrose ALLI University Press,2016)

Unit 3
Legal Research in NOUN

CONTENT

1.0 Objectives
2.0 Main Content
3.0 Conclusion
4.0 Conclusion
5.0 Summary
6.0 Tutor- Marked Assignment
7.0 References/Further Reading.

1.0 INTRODUCTION

The aim and objective of this course is to give NOUN Law students a theoretical basis for the understanding of Legal Research Skill and Methodology, thereby preparing them for a more complex and practical based knowledge of research writing and dissertation in their undergraduate and post-graduate academic career. NOUN Law Students should be able to have a basic understanding of the relation of law to society, both in terms of its nature, dynamics and purpose: have a theorisation of law and social change, hopefully with specific reference to Nigeria, and: be able to decipher the elements that make law more efficient and: understand its attributes as a social control tool **and** have a practical based knowledge of how to do and publish a research in Law.

2.0 OBJECTIVES

At the end of this unit, students should be able to understand the impetus behind the preparation of this courseware.

3.0 MAIN CONTENT

The Law programme in NOUN has been designed within the context of a general philosophy that university education should be interdisciplinary, and that legal education in particular should not only prepare students for membership of the legal profession by providing them with a rigid body of legal formula, but should primarily be a challenge for the individual to creative work. In this regard, students of the School of Law, like their counterparts in most other universities in Nigeria, were unable to present a dissertation in their chosen area of law as required in partial fulfilment of their respective degrees.

Experience has shown that law students generally are unable to undergo a transformation from passive consumer of academic knowledge into active co-producers, thereby turning project supervision, and otherwise interesting task, into a tortuous and herculean one for both supervisors and students. In most cases, students exploit past project work from universities other than theirs.

4.0 Conclusion

This course material on legal research methodology and project writing arose from that lacuna. The primary importance of this courseware lies in the fact that law is not a static subject, but is always evolving and developing to keep pace with other social sciences. Acknowledging some common features and similarities of research methodology of all social sciences, law as an object of research requires special methods and approaches.

5.0 Summary

In this unit, you have learnt the philosophy behind JIL 447.

6.0 Tutor Marked Assignment

1. Give reasons why you feel that LAW 447 is relevant to Law students of NOUN.

7.0 References/Further Reading.

1. Khushal V. & Philipus A., *Legal Research Methods: Teaching Material* (2009, Justice and Legal System Research Institute).
2. Chegwe Emeke Nelson, *Legal Research Methodology and Project Writing* (Ekpoma-Nigeria: Ambrose Alli University Press, 2016)
3. Luhman, *Sociological Theory of Law* (1972, English translation, 1985), cited by Khushal V. & Philipus A's *Legal Research and Methods* supra at 3.

MODULE 2
Introduction to Legal Research

Unit 1: The Need for Legal Research
Unit 2: What is Research?
Unit 3: Types and purpose of Research

Unit 1
The Need for Legal Research

CONTENT

1.0 Introduction
2.0 Objectives
3.0 Main Content
 3.1 Law and Society
 3.2 Law as system of norms and social system
 3.3 The role of Law in a planned socio-economic development
4.0 Conclusion
5.0 Summary
6.0 Tutor Marked Assignment (TMA)
7.0 References/Further Reading

1.0 INTRODUCTION

Generally, law is influenced by prevailing social values and code. Law in turn also influences social values and code. Such a complex nature of law and its application requires systematic approach to the understanding of law and its operational dynamics. A systematic investigation into these aspects of law helps in knowing the existing and emerging legislative policies, laws, their social relevance and efficacy. Accordingly, the present course will acquaint the student of law with specific scientific methods of enquiry into law. It also intends to make them familiar with the nature, scope and significance of legal research.

2.0 OBJECTIVES

At the end of this unit, students should be able to know the role of legal research in the development of law and legal institutions, in particular, and social economic development of the country. They should be able to understand the dynamics of law and society.

3.0 MAIN CONTENT

3.1 Law and Society

Most laws are found in statute books and textbooks, but they do not govern the lives of textbooks, neither do they operate in vacuum. It has to reflect social values, attitude and behaviour. As noted in our introductory averment, societal values and norms also influence law directly or indirectly as it tries to mould and control these values, attitudes and behavioural pattern so that they flow in a proper channel. As it attempts either to support the social system or to change the prevalent social situations or relationships, by its former process of rules and sanctions, law also influences other parts of the social system. Commenting on the relationship between law and society, Gasiokwu M.O has this to say,

> *"the relationships between the different strata of society are regulated by a body of rules commonly referred to as law, so that law could therefore be referred to as an instrument both of social control and of social change. The attitude of members of the society towards legal precepts or legal institutions is dictated by the relationships which the law sets out to establish or regulate at any particular time or place. This in turn is determined primarily by the class interest of the law maker. The law which regulates all aspects of our social life are made by men for men, and are operated, implemented and enforced by human beings through various legal institutions. The status of such institutions, the effect of particular laws, or the sentiments of the people, or the operation of certain legal machinery, may also become the subject matter of legal research."*

Also commenting on interrelationship, Luhman has observed that all collective human life is directly or indirectly shaped by law. Law is like knowledge, an essential and all-pervasive fact of the social condition. No are of social life, whether it be family, religious, community, scientific, etc, is the internal network of political practice can find a lasting social order that is not based on law. There is therefore an indispensible minimum amount of legal orientation everywhere.

The societal values and patterns as can be observed above are dynamic and complex, and this dynamism of societal values make the discipline of law dynamic and complex. Law also has to be dynamic.

SELF-ASSESMENT EXERCISE 1

1. What is the link between law and society?
2. Does law influence society or society influence law?

3.2 Law as system of norms and social system

According to Khushal & Philip, there are three dimensions or aspect of legal system;

(i). Legal system as a norative system

(ii). Legal system as a social system; and

(iii). Legal system as a combination of formal and non-formal norms of social control.

Each of these dimensions of legal systems has their own interrogations, investigations, and different areas of enquiry.

Legal system as an aggregate of legal norms raise a set of typical questions such as, How is law generated? What forces in society influenced or created particular kinds of law? By what concept and criteria can we identify the existence of s legal system? Why the second conception of legal system warrants the study of international behavioural patterns and roles of the law makers (legislation), law interpreters (judges), law-enforcers (the police), law-breakers (wrong doers), and law-compliers (law-abiders) and their influences, individual or cumulative, in the legal system and legal processes. The third one addresses to the interrelationship (supportive or otherwise) between the formal (legal) rules and (informal) non-legal rules (such as religious, indigenous, or customary norms) in shaping law as social control system.

SELF-ASSESMENT EXERCISE 2

1. Describe social dimensions of law
2. Is law normative in character or a part of social system?

3.3 The role of Law in a planned socio-economic development

A contemporary modern state, which endeavours to bring socio-economic transformation envisaged in its Constitution, assigns a catalyst role to law. It strives to bring such a transformation through a cluster of social welfare legislations enacted in pursuance of its constitutional objectives, policies and perceptions.

For example, a careful look at the well-articulated ‘economic objectives’, ‘social objectives’, and ‘environmental objectives’ embodied in the FDRE Constitution6 reveals laws’ role in accomplishing them. The Government, inter alia, is duty bound to ensure that all Ethiopians get equal opportunity to improve their economic conditions and to promote equitable distribution of wealth among them and to deploy land and other

natural resources for the common benefit of the People and development. It has also to make endeavour to protect and promote the health, welfare and living standards of the working population of the country. The Constitution also obligates the Government to provide special assistance to Nations, Nationalities, and Peoples least advantaged in economic and social development. The Constitution also envisages Ethiopians access to public health and other basic amenities. It assures them of a clean and healthy environment. All these constitutionally contemplated prescriptive obviously assign a greater role to 'law' in their accomplishment.

SELF-ASSESSMENT EXERCISE

1. Comment upon roles of law in bringing socio-economic changes.
2. What relationship is there between Nigerian Criminal Law and Constitutional law, and the Nigerian People?

4.0 Conclusion

If the numerous laws were perfect, if social control were automatic, legal scholarship, like the state of the Marxist, could be left to wither away. But our laws are not perfect and final, and cannot be so in a dynamic society. It is because laws cannot be dynamic in a perfect society that law reforms are being continuously undertaken to reflect the existing reality. The imperfection of laws will necessitate explanation, and consequently, cause for research will always be made. (Gasiokwu M.U.)

5.0 Summary

In this unit, you have learnt about the role of legal research in the development of law and legal institutions, and social economic development of the country, as well as understood the dynamics of law and society.

6.0 Tutor Marked Assignment

1. What relationship is there between Nigerian Criminal Law and Constitutional law, and the Nigerian People?

7.0 References/Further Readings

4. Khushal V. & Philipus A., *Legal Research Methods: Teaching Material* (2009, Justice and Legal System Research Institute).
5. Chegwe Emeke Nelson, *Legal Research Methodology and Project Writing* (Ekpoma-Nigeria: Ambrose Alli University Press, 2016)

6. Luhman, *Sociological Theory of Law* (1972, English translation, 1985), cited by Khushal V. & Philipus A's *Legal Research and Methods* supra at 3.

Unit 2
What is Research?

CONTENT

1.0 Introduction
2.0 Objectives
3.0 Main Content
 3.1 Meaning of Research.
 3.2 What is Legal Research?
 3.3 Nature, scope and subject matter of Legal Research
 3.4 Motivation in Research
 3.5 Research and Scientific Method
 3.6 Research Methods and Research Methodology
 3.7 Objectives of Legal Research
 3.8 Doctrinal and Non-doctrinal Research
4.0 Conclusion
5.0 Summary
6.0 Tutor Marked Assignment (TMA)
7.0 References/Further Reading

1.0 INTRODUCTION

Research in simple terms can be defined as 'systematic' investigation towards increasing the sum of human knowledge as a 'process' of identifying and investigating a 'fact' or a 'problem' with a view to acquiring an insight into it, or finding appropriate solution to it. An approach becomes systematic when a researcher follows certain scientific approach. It therefore means that any piece of knowledge that was merely or accidentally uncovered is not a research.

2.0 OBJECTIVES

At the end of this unit, students should be able to:

- know the meaning of research
- know the nature, scope and subject matter of Legal Research
- understand the objectives of Legal Research
- know the categories of legal research

3.0 MAIN CONTENT

3.1 Meaning of Research.

The term 'research' has so many definitions. According to the Webster international dictionary, research is a careful, critical enquiry or explanation in seeking facts or principles; diligent investigation in order to ascertain something. The Advanced Learner's dictionary of current English defines 'research' as a careful investigation or enquiry specifically through search for new facts in any branch of knowledge. D. Slinger & M. Stevenson, on their own part see research as manipulation of themes, concept of symbols, for the purpose of generalising, to extend, correct, or verify knowledge, whether that knowledge aids in construction of theory, or in the practice of an art. The 1911 Cambridge ed. of the Encyclopaedia Britannica defines research as 'the act of searching into a matter closely and carefully, enquiring directly to the discovery of truth, and in particular, the trained scientific investigation of any principle and facts of any subject based on original and first hand study of authority or experiments…' Based on all these sources, Chegwe Emeke stated that research is the careful, diligent and exhaustive investigation of a specific subject matter with a view to knowing the truth and making original contribution in the existing stock of knowledge.

Inasmuch as one would want to agree with the immediate foregoing definition, no research can ever be so exhaustive of the subject matter of research, neither can there be anything as misleading as an 'absolute truth' in research. According to Gasiokwu M.U.,

> *"research is done with the faith that we live in an organised world, that the world is rational, that there is such a thing as cause and effect, but the cause comes before the effect, that knowledge can be discovered and be added to, that problems are soluble and truth is real, but absolute truth is unattainable, and there is no foreseeable end to research."*

Research is therefore the assemblage of information of facts for verifying a preposition or ascertaining an assumption. It is an investigation for the authentication fo new theories in order to supplement existing theories by new information. Research therefore involves identification of a research problem, the ascertainment of facts, their logical ordering and classification, the use of inductive and deductive logic to interpret the collected and interpreted facts, and the arrival of conclusions premised on and supported by the collected information.

SELF-ASSESSMENT EXERCISE 1

List and discuss the elements constituting research.

3.2 What is Legal Research?

Arising from the various definitions of research in the preceding pages, legal research may be defined as the systematic investigation towards increasing the sum knowledge of law. It involves ascertaining what the law is on an identified topic or in the given area as well as the enquiry into law with the view to expanding the science of law. Finding what the law is in a particular area is not an easy task. There may be several statutes with different amendments scattered in different volumes. In addition these statutes and provisions may be supplemented from time to time by a bulk of rules, regulations, directives and policy guidelines. There could also be various courts pronouncements either expanding or limiting the applications of these rules by interpretation. A quest for making advances in the science of law requires the legal researcher to systematically probe into the underlying principles of and reason for law. Thus, legal research has a very wide scope as it, in its ultimate analysis into one or other dimensions or aspects of law. Legal research therefor involves a process of identifying and retrieving information necessary to support decision making.

SELF-ASSESSMENT EXERCISE 2

Why is legal research a continuum?

3.3 Nature, scope and subject matter of Legal Research

Governments are formed and constitutions are established. The laws which regulate aspects of our social lives are made by legislatures and enforced by executives. The capacity of such laws to achieve the set objectives are determined by the outcome of the interplay between the relationships which the law sets to establish or regulate (often determined by the class interest of the law maker) and the effect of particular laws on the culture and socio-religious sentiments of the people. Therefore the subject matter of legal research includes human beings, the society and legal relations. Gasioku M.U. posits that human beings as objects of legal research may be approached either as individuals or as members of the society. They may also be researched in their behavioural patterns either as members of mankind, of the society as a whole, or as members of a particular class or social strata. The relationship between the different strata of society, e.g., governed/governor, rich/poor, student/teacher, lawyer/client, company/director, federal/State legislature, are all governed by law.

In any democracy the legislative process must be informed by public opinion. While some researchers maintain that public opinion should not be given much attention because the public lacks proper understanding of the issues involved, advocating instead that the legislature must lead the public, it is important to note also that while the

legislature in most societies, is the specific institution vested with the powers to make laws, its members are seldom selected on basis of academic or intellectual criteria. A good legislature must appreciate the limits of the law, and how much societal resistance the legislature can withstand. Thomas Aquinas saw law as ordinance of reason for the common good. Roscoe Pound conceived law as an instrument of social engineering, while Karl Marx saw law as nothing more than a reflection of the desire of the bourgeois class. If we find that most of our constitutions have failed to unite all the various ethnic nationalities into a united one Nigeria, it may be that the constitutions were not planned systematically, and no course benefit analysis was done at their formulation stage.

Judicial process can also be an area of research. Courts at least in area of common law jurisdictions do not only interpret laws but also create laws through judicial pronouncement. Judges as adjudicators also factor their innate witnesses and shortcomings into their judicial pronouncement no matter how objective they claim to have been in their rulings. Thus a judgement is a reflection of the personality, background and life philosophy of the judge. It may therefore be necessary to research their mode of appointment and selection, their family, educational and social background, and what kind of personal, social and judicial philosophy they hold and profess. Behavioural study of judges and lawyers therefore becomes necessary to appreciate the realities of judicial process.

SELF-ASSESSMENT EXERCISE 3

What will be the potential importance of a research conducted to understand the effectiveness or impact of the law in support of same sex marriage in Nigeria?

3.4 Motivation in Research

An equally important question, namely, what makes a scholar to undertake research, deserves our attention. A general response to the question, probably, would be that a person, who is curious to know something more about something, undertakes a systematic study of that something to kill his curiosity. His quest for knowing about, or acquiring knowledge of, 'something', plausibly motivates him to undertake research of that 'something'. However, there could be a couple of other 'motivations' for him to get indulged into research. They are:

1. Desire to earn a research degree along with its consequential benefits.
2. His 'concern' for thitherto 'unsolved' or 'unexplored' 'problem' and his keen desire to seek solution therefor, and be a proud recipient of that contribution.
3. Desire to acquire reputation and acclaim from his fellow men.
4. Desire to get intellectual joy of doing some 'creative' work.

5. Desire to render some service to society.

However, when it concerns with legal research, a scholar of law, in addition, needs to convince himself that his desire for legal research arises from his determination to do something new-to look at the world with unbiased eyes, to try with open and inquiring mind to find out how and why the law tricks, to see whether the law is in fact serving the needs of today. Sometimes he, particularly when he is interested in finding out social utility of law, may have to come out of bookish introspection and to venture into empirical study. He may also require joining hands with other social scientists.

SELF-ASSESSMENT EXERCISE 4

In three sentences, outline your aim of reading this course.

3.5 Research and Scientific Method

Research, as stated earlier, is a systematic inquiry into a 'fact'. It involves the collection of facts, analysis of the collected facts, and logical inferences drawn from the analysed facts. A method of inquiry becomes systematic only when the researcher resorts to a systematic approach to, and follows a scientific method of inquiry into, the fact under investigation. Research, simply put, is an endeavour to arrive at certain conclusions through the application of scientific methods. 'There is no shortcut to the truth --- no way to gain knowledge of the universe except through the gateway of scientific method.'13 Scientific method is loaded with logical considerations. It is the pursuit of truth as determined by logical considerations. The ideal of science is to achieve a systematic inter-relation of facts. Scientific method attempts to achieve 'this ideal by experimentation, observation, logical arguments from accepted postulates and a combination of these three in varying proportions'.14 In scientific method, logic aids in formulating propositions explicitly and accurately so that their possible alternatives become clear. Further, logic develops the consequences of such alternatives, and when these are compared with observable phenomenon, it becomes possible for the researcher or the scientist to state which alternative is most in harmony with the observed facts. All this is done through experimentation and survey investigations, which constitute the integral parts of scientific method. 'The scientific method', according to Karl Pearson, 'is one and the same in all branches (of science) and that method is the method of all logical trained minds --- the unity of all sciences consists alone in its methods, not its material; the man who classifies facts of any kind whatever, who sees their mutual relation and describes their sequences, is applying the Scientific Method and he is a man of science'.

The scientific method is, thus, a method used by the science. Science rests on reason (rationality) and facts. Science is logical, empirical and operational. Scientific method is, therefore, based on certain postulates and has certain characteristics. They are: (i) it is

logical, i.e. it is basically concerned with proof based on reason, (ii) it is empirical, i.e. theories are rooted in facts that are verifiable, (iii) it is operational, i.e. it utilizes relevant terms/concepts that help in quantification and conclusion, (iv) it is committed to only objective considerations, (v) it pre-supposes ethical neutrality, i.e. it aims at nothing but making only adequate and correct statements about population objects, (vi) it is propositional, i.e. it results into probabilistic predictions that can be proved or disproved, (vii) its methodology is public, i.e. it is made known to all concerned for critical scrutiny, testing/retesting of propositions, (viii) it tends to be systematic, i.e. indicates inter-relationship and organization between the facts and propositions, and (ix) it aims at theorizing, i.e. formulating most general axioms or scientific theories.

Scientific method implies an objective, logical and systematic method, i.e. a method free from personal bias or prejudice, a method to ascertain demonstrable qualities of a phenomenon capable of being verified, a method wherein the researcher is guided by the rules of logical reasoning, a method wherein the investigation proceeds in an orderly manner and a method that implies internal consistency.

3.6 Research Methods and Research Methodology

The term 'research methods' refers to all those methods and techniques that are used by a researcher in conducting his research. The term, thus, refers to the methods, techniques or tools employed by a researcher for collecting and processing of data, establishing the relationship between the data and unknown facts, and evaluating the accuracy of the results obtained. Sometimes, it is used to designate the concepts and procedures employed in the analysis of data, howsoever collected, to arrive at conclusion. In other words, 'research methods' are the 'tools and techniques' in a 'tool box' that can be used for collection of data (or for gathering evidence) and analysis thereof. 'Research methods' therefore, can be put into the following three groups:

(i). The methods which are concerned with the collection of data [when the data already available are not sufficient to arrive at the required solution].

(ii). The statistical techniques [which are used for establishing relationships between the data and the unknowns].

(iii). The methods which are used to evaluate the accuracy of the results obtained..

The term 'research methodology', on the other hand, refers to a 'way to systematically solve' the research problem. It may be understood as a 'science of studying how research is done scientifically'. It involves a study of various steps and methods that a researcher needs generally to adopt in his investigation of a research problem along with the logic behind them. It is a study of not only of methods but also of explanation and justification for using certain research methods and of the methods themselves. It includes in it the

philosophy and practice of the whole research process. In other words, research methodology is a set of rules of procedures about the way of conducting research. It includes in it not just a compilation of various research methods but also the rules for their application (in a given situation) and validity (for the research problem at hand). A researcher, therefore, is required to know not only the research methods or techniques but also the methodology, as he needs to decide as well as to understand the relevancy and efficacy of the research methods in pursuing the research problem at hand. He may be confronted with equally relevant and efficacious alternative research methods and techniques at each stage of his research study. He, therefore, has to consciously resort to the research methods and techniques that are most appropriate to carry his investigation in a more systematic manner. This becomes possible only when he is acquainted with the underlying assumptions and utility of various research methods or techniques available to him. A study of research methodology equips him with this kind of knowledge and skill. C.R. Kothari, bringing out the correlation between research methods and research methodology, observed:

> *"Research methodology has many dimensions and research methods do constitute a part of the research methodology. The scope of research methodology is wider than that of research methods. Thus, when we talk of research methodology we not only talk of the research methods but also consider the logic behind the methods we use in the context of our research study and explain why we are using a particular method or technique and why we are not using others so that research results are capable of being evaluated either by the researcher himself or by others. Why a research study has been undertaken, how the research problem has been identified, in what way and why the hypothesis has been formulated, what data have been collected and what particular method has been adopted, why particular technique of analysing data has been used and a host of similar other questions are usually answered when we talk of research methodology concerning a research problem or study."*

A study of research methodology has the following advantages:

1. It inculcates in a researcher the ability to formulate his research problem in an intelligent manner.
2. It inculcates in him objectivity in perceiving his research problem and seeking solutions therefor.

3. It equips him to carry out his research undertaking in an efficient manner and in a better way.
4. It enables him to take rational decisions at every step of his research.
5. It enables him to design appropriate research technique(s) and to use it (them) in an intelligent and efficient manner.
6. It enhances his ability to analyse and interpret data with reasonable objectivity and confidence.
7. It enhances ability of the researcher and/or others to evaluate research findings objectively and use the research results in a confident way.
8. It entails a good research.
9. It enables him to find a satisfactory way of acquiring new knowledge.

Importance of knowing 'research methodology' or 'the way of doing research' is well articulated by C.R. Kothari as follows: In fact, importance of knowing the methodology of research or how research is done stems from the following considerations:

(i) The knowledge of methodology provides good training specially to the new research worker and enables him to do better research. It helps him to develop disciplined thinking or 'bent of mind' to observe the field objectively. ---

(ii) Knowledge of how to do research will inculcate the ability to evaluate and use research results with reasonable confidence.

(iii) When one knows how research is done, then one may have the satisfaction of acquiring a new intellectual tool which can become a way of looking at the world and of judging every day experience. Accordingly, it enables us to make intelligent decisions concerning problems facing us in practical life at different points of time. Thus, the knowledge of research methodology provides tools to look at things objectively.

(iv) The knowledge of methodology helps the consumer of research results to evaluate them and enables him to take rational decisions
(Adopted from V. Khushal & A. Filipos Teaching material on *Legal Research Methods*).

SELF-ASSESSMENT EXERCISE 5

Differentiate between legal research method and legal research methodology

3.7 Objectives of Legal Research

Every research study has its own goals or objectives. Research objective of any given research may fall under either of the following broad categories:

a) To ascertain the legal consequences of a specific set of facts; and

b) To study the functions of particular legal institutions in a specific economic, social and political context

This might be motivated by:

(i). The need to gain an insight into the existing state of affairs, and to arrive at a diagnosis or the forces and factors which determine the studied section of social reality;
(ii). The testing of certain hypotheses upon which legislation could be based; and
(iii). The need to disclose whether enacted legal precepts have attained their intended effects, or on the other hand, have introduced some unexpected and undesirable effects

The first (a) is concerned with researching the law, as it stands in the books, while the second (b) deals with research in the sociology of law, i.e. the actual working of the law. Category (a) belongs to the set of research known as ‘Non-doctrinal Legal Research’, while category (b) is known as ‘Doctrinal Research’. These are two main broad categories of legal research. They are obviously not mutually exclusive since they overlap.

SELF-ASSESSMENT EXERCISE 1

What are the objectives of research?

3.8 Doctrinal and Non-doctrinal Research

3.8.1 Doctrinal Research

Doctrinal research is the research into doctrines. It involves analysis of case law and statutory provisions by application of the power of reasoning. The main characteristics of doctrinal research according to Gasiokwu are:

(i). The scholar organises his study around legal prepositions, and
(ii). Primary sources are the main source of data, secondary sources play only supportive roles

Doctrinal research is the research into law as a normative science, that is the science which lays down norms and standards for human behaviour in a specified situation or situations enforceable through the sanctions of s State. It is this normative character that distinguishes law from other related discipline of other social sciences. Doctrinal research is a research into law as it stands in the books, it is speculative in nature. Speculative in the sense that it consists in pondering over the essence and main qualities of law. The various viewpoints which are admissible within it cannot be compared because they cannot be empirically verified. Another name for doctrinal research is research into theory. It involves an enquiry into conceptual basis of legal rules, principles or doctrine.

It provides stimulus and intellectual infrastructure for empirical research though it is not empirical.

3.8.2 Non-doctrinal Research

Non-doctrinal research is the research of the actual working of the law in society in relation with other interdependent factors. It researches the relationship between law and other behavioural sciences. Here the emphasis is not really on legal doctrines and concepts but on people, social values and social institutions. Non-doctrinal research takes either some aspects of the legal decision process, or the people and institutions supposedly regulated by law as the focus of study. In non-doctrinal research, data needed to answer questions are not ordinarily available in conventional legal sources. Hence field work is usually required for this type of research. Most non-doctrinal research may seek:

a) To assess the impact of non-legal events e.g. economic development, growth of knowledge, technical changes upon legal decision processes.
b) To identify and appraise the magnitude of variable factors influencing the outcome of legal decision making e.g., the effect of capital punishment on the prevalence of dangerous crime at a given place at a given time.
c) To trace the consequences of the outcome or legal decision making in terms of values, gains and deprivation of litigants, non-litigants and non-legal institutions.

The answer to the problems such as those outlined above may require excursions outside the traditional legal materials. It may necessitate the empirical approach.

In most developing countries including Nigeria, doctrinal research constitute the dominant research approach. Non-doctrinal research techniques are unfortunately regarded as subversive by most law teachers; while others believe that such approach represent the indulgence of those who do not understand what is truly entailed in the study of law. To this latter group such approaches lead to the corruption of law as it is. To them the proper domain of law is positive or written law. It is hereby noted that law has no central concept of its own, it parasites on other social sciences. Knowledge of other related sciences therefore enhance the knowledge of law.to most lawyers, excursion outside traditional legal material is of no utility. As such, they remain ignorant to empirical techniques and run away from empirical investigation. More so, when conclusions are arrived at on the basis of data collated through empirical research techniques would be inadmissible in legal proceedings or at any rate not binding on the judges. The factors inhibiting non-doctrinal research could be summarised as follows:

a) Lack of adequate financial support
b) Other disciplines shield and still shy away from the study of the legal order

c) Law lecturers are obsessively preoccupied with the teaching function and their arm chair doctrinal research for the purpose of publication form promotions, and to enhance their income,
d) The law lecturers lack a tradition sustaining non-doctrinal research. They cannot stand mockery from colleagues in case of failure. If the law makers don't recognise their findings, what is in it for them?
e) Law lecturers are not adequately trained in the techniques of empirical research.

SELF-ASSESSMENT EXERCISE 4

1. Discus doctrinal legal research, and evaluate its relative significance and potentials in the development of a law.
2. What is meant by non-doctrinal legal research? In what way does it contribute to the development of law and legal system?

4.0 Conclusion

A happy trend in legal research is the movement towards closer working relationship between legal scholars and scholars from other disciplines, particularly, the behavioural sciences. Similarly, there has been a remarkable upsurge of interest by other disciplines in the study of legal phenomena, especially as part of a system of social control and an acceleration of field studies of judicial, legislative and administrative process. A great reward of legal research is the awareness of judicial creativity, associated with growth in the law. To any student, it is an important intellectual stage when he first realises that law is in a state of constant motion. The student may not realise when this realisation came to him, but if he looks back there must be a difference in all his notion about law since the time of the realisation (Gasiokwu).

5.0 Summary

In this unit, you have learnt about the following:
- the meaning of research
- the nature, scope and subject matter of Legal Research
- the objectives of Legal Research
- the categories of legal research

6.0 Tutor Marked Assignment

1. Classify the following published research products using their titles into one or the other categories of the categories of research that was discussed.

(i). International Law and Diplomacy: Challenging the fixity of State Sovereignty in Law, Politics and Diplomacy in Contemporary Nigeria, Essays in honour of Prof. B.I.C. Ijomah, edited by M.U. Gasiokwu (Enugu – Nigeria, Chenglo Ltd., 2010)

7.0 References/Further Readings

1. Chegwe Emeke Nelson, Legal Research Methodology and Project Writing (Ekpoma-Nigeria: Ambrose Alli University Press, 2016)

2. Gasiokwu M.U, *Legal Research and Methodology* (Jos – Nigeria; Fab Educational Books, 1994)
3. Luhman, *Sociological Theory of Law* (1972, English translation, 1985), cited by Khushal V. & Philipus A's *Legal Research and Methods* supra at 3.
4. C.R. Kothari, *Research Methodology: Methods and Techniques* (New Age International Publishers, New Delhi, 2nd ed., 2001, Reprint 2007)2.
5. George D. Braden, *Legal Research: A Variation on an Old Lament*, 5 *Jr of Legal Edu* 39 (1952-1953).

Unit 3
Types and purpose of Research

CONTENT

1.0 Introduction
2.0 Objectives
3.0 Main Content
  3.1 Descriptive vs. Analytical Research
  3.2 Applied vs. Fundamental Research
  3.3 Quantitative vs. Qualitative Research
4.0 Conclusion
5.0 Summary
6.0 Tutor Marked Assignment (TMA)
7.0 References/Further Reading

1.0 INTRODUCTION

Law, as mentioned earlier, does not operate in a vacuum. It operates in a complex 'social setting'. It reflects social attitudes and behaviour. It also seeks to mould and control social attitudes and behaviour of people to ensure that they flow the expected channel. However, social values and attitudes, existing as well as expected, keep on changing. It makes the law to be dynamic and cope with the changing social ethos. In such an environment, specific types of legal research are imperative for certain purposes.

2.0 OBJECTIVES

At the end of this unit, students should be able to know the:
- types of legal research
- purpose of legal research

3.0 MAIN CONTENT

According to C.R. Kothari, the basic types of research are: (i) Descriptive and Analytical Research, (ii) Applied and Fundamental Research, (iii) Quantitative and Qualitative Research, and (iv) Conceptual and Empirical Research. Each one of these is briefly discussed here below:

3.1 Descriptive vs. Analytical Research

Descriptive research, as its name suggests, describes the state of affairs as it exists at present. It merely describes the phenomenon or situation under study and its characteristics. It reports only what has happened or what is happening. It therefore does not go into the causes of the phenomenon or situation. The methods commonly used in descriptive research are survey methods of all kinds, including comparative and co-relational methods, and fact-finding enquiries of different kinds. Thus, descriptive research cannot be used for creating causal relationship between variables. While in analytical research, the researcher uses his facts or information already available and makes their analysis to make a critical evaluation of the material.

SELF-ASSESSMENT EXERCISE 1

Describe analytical legal research and explain its significance.

3.2 Applied vs. Fundamental Research

Applied research or action research aims at finding a solution for an immediate problem. Here the researcher sees his research in a practical context. While in fundamental research or pure research or basic research, the researcher is mainly concerned with generalization and with the formulation of a theory. He undertakes research only to derive some increased knowledge in a field of his inquiry. He is least bothered about its practical context or utility. Research studies concerning human behaviour carried on with a view to making generalizations about human behaviour fall in the category of fundamental or pure research. But if the research (about human behaviour) is carried out with a view to solving a problem (related to human behaviour), it falls in the domain of applied or action research. The central aim of applied research is to discover a solution for some pressing practical problem, while that of fundamental research is to find additional information about a phenomenon and thereby to add to the existing body of scientific knowledge. The 'applied' scientist is thus works within a set of certain values and norms to which he feels committed. A sociologist, for example, when works with a social problem to find solution therefor and proposes, through a systematic inquiry, a solution or suggests some measures to ameliorate the problem, his research takes the label of 'applied' or 'action' research. But when he undertakes a study just to find out the 'what', 'how' of the social problem, his inquiry takes the nomenclature of 'pure' or 'fundamental' research.

However, the above-mentioned 'distinguishing factor' between the 'applied' and 'fundamental' research need not be conceived as a 'line' putting the two 'across' the 'line' forever or an 'either-or' dichotomy. In fact, they are not mutually exclusive. There is a constant interplay between the two, each contributing to the other in many ways.

SELF-ASSESSMENT EXERCISE 2
What is meant by applied and fundamental research? Explain its significance and utility.

3.3 Quantitative vs. Qualitative Research

Quantitative research is based on the measurement of quantity or amount. It is applicable to a phenomenon that can be expressed in terms of quantity. It is systematic scientific investigation of quantitative properties of a phenomenon and their inter-relation. The objective of quantitative research is to develop and employ mathematical models, theories and hypotheses pertaining to the phenomenon under inquiry. The process of measurement, thus, is central to quantitative research because it provides fundamental connection between empirical observation and mathematical expression of quantitative relationship.

Qualitative research, on the other hand, is concerned with qualitative phenomenon, i.e. phenomenon relating to or involving quality or kind. For example, when a researcher is interested in investigating the reasons for, or motives behind, certain human behaviour, say why people think or do certain things, or in investing their attitudes towards, or opinions about, a particular subject or institution, say adultery or judiciary, his research becomes qualitative research. Unlike quantitative research, qualitative research relies on reason behind various aspects of behaviour.

SELF-ASSESSMENT EXERCISE 3
Classify a research that is carried out to ascertain the number of Law students in NOUN who adhere to lecture attendance threshold.

3.4 Conceptual vs. Empirical Research

Conceptual research is related to some abstract idea(s) or theory. It is generally used by philosophers and thinkers to develop new concepts or to re-interpret the existing ones. On the other hand, empirical research relies on experience or observation alone, often without due regard for system or theory. It is data-based research, coming up with conclusions that are capable of being verified by observation or experiment. It is therefore also known as experimental research. In empirical research, it is necessary to get facts first-hand, at their source. In such a research, the researcher must first provide himself with a working hypothesis or guess as to the probable results. He then works to gets enough facts (i.e. data) to prove or disprove his hypothesis.

SELF-ASSESSMENT EXERCISE 4

Define the term 'concept'. What relationship does the term have with 'knowledge'?

3.5 Importance (Purpose) Of Legal Research

In certain situations, legal research becomes necessary: (i) for ascertainment of law on a given topic or subject, (ii) to highlight ambiguities and inbuilt weaknesses of law, (iii) to critically examine legal provisions, principles or doctrines with a view to see consistency, coherence and stability of law and its underlying policy, (iv) to undertake social audit of law with a view to highlighting its pre-legislative 'forces' and post-legislative 'impacts', and (v) to make suggestions for improvements in, and development of, law.

3.5.1 Ascertainment of law

It is needless to mention that laws can never be perfect and final in a dynamic society. 'If our numerous laws', a scholar observed, 'were perfect, if social control were automatic, legal scholarship, like the State of the Marxists, could be left to wither away'. 'But our laws', according to him, 'are not perfect and final, and cannot be so in a dynamic society: they are not always even intelligible, and if intelligible, not always intelligently made.'31 Therefore, a systematic effort is required to ascertain or find law on a given subject/topic. He requires not only to locate and to look into relevant Act(s) of Parliament but also to locate relevant secondary legislative instruments in the form of rules, regulations, orders, directions, notifications, and byelaws and judicial pronouncements thereon.

3.5.2 Highlighting inbuilt 'gaps' and 'ambiguities'

No legal language or phrase, howsoever a legal drafter may be vigilant, visionary and skilled craftsman, can be perfect and be capable to take forever into its ambit all the future contingencies and circumstances. Sometimes, a provision may not, in terms of its phraseology or pragmatic operation, aptly fit into overall legislative intent of the Act or match with its other provisions or provisions of other Acts.

A legal researcher, through systematic analysis, may be able to highlight these 'gaps' and inbuilt weaknesses of the Act or its provisions.

3.5.3. Determining consistency, coherence and stability of law

A legal researcher, through critical examination of legal propositions, rules and doctrines embodied therein, in the light of interpretations thereof and legislative policy of the statute, can, with apt analysis and supporting reasoning, exhibit consistency and coherence or otherwise of a given law. Such an analysis helps in the development of law, legal provision or doctrine, as the case may be.

3.5.4 Social auditing of law

Legal research is also necessary for taking pre-legislative social audit of law as it helps to understand and appreciate the social forces that played significant role in the making of given law in its present form. Such an understanding enables us to know the social stakes that law intends to protect or change and reasons therefor. It helps to appreciate underpinning of the given law and its legislative target and strategy. While post-legislation social auditing helps us to identify 'gap(s)', if any, between the 'legal ideal' and the 'social reality' and to know reasons or factors responsible therefor. Such an audit helps us to find out as to whether a given law is assimilated in the society and is (or is not) serving the needs of the society. It also unravels the reasons or factors that are responsible for making a given law a mere symbolic or a failure in attaining its intended legislative goal(s). It also enables us to predict future of the law.

3.5.5 Suggesting reforms in law

In the light of underlying legislative policy of a Statute and the highlighted inbuilt weaknesses or inconsistencies thereof, a legal researcher can easily offer concrete suggestions or proposals for reform or improvement in the given law. By undertaking analytical, historical and comparative research, he can also formulate his proposals for reform in precise terms. Analytical research, as stated above, is concerned with the ascertainment of law. It deals with the present. Historical research, on the other hand, deals with the past and it involves an inquiry into historical antecedents and evolution of law. The past often explains the present, most vividly. It reveals different alternative legislative measures, other than the current ones, thought of when the law was in the making. It discloses the reasons for their rejection and for adoption of the present ones. Historical research often shows that a particular existing legal provision, rule or doctrine, fully justifiable at the time when it was introduced or adapted, is no longer so justifiable because the reasons or circumstances that justified the original inclusion of that provision, rule or doctrine are no longer valid or exist. While comparative research aims at finding parallels from other jurisdictions. Thus, analytical [i.e., finding the existing law]; historical [i.e., finding out the previous law in order to understand the reasons behind the existing law and the course of evolution], and comparative (i.e., finding out what the law is in other countries, and considering whether it can be adapted, with or without modifications) lead to law reforms or development of law.

SELF-ASSESSMENT EXERCISE 5

Comment on the importance of legal research by legal academia. Assess his possible contribution in the development of law and legal institution.

4.0 Conclusion

Anyone who is curious enough about a particular law, its operational process, and is willing to work hard to know it can be a legal researcher. He may be a sociologist, a historian, a political scientist, or an economist. But as an occupational exercise, legal research needs to be undertaken by legislator, judges, lawyers, and legal academia made up of teachers and students. The very nature or professional commitment forces these persons to get themselves involved in legal research, there is no alternative to it.

5.0 Summary

In this unit, you have learnt about the following:
- the types of legal research
- the purpose of legal research

6.0 Tutor Marked Assignment

1. Write an essay on perspectives and problems of legal research in Nigeria.

7.0 References/Further Readings

1. Chegwe Emeke Nelson, Legal Research Methodology and Project Writing (Ekpoma-Nigeria: Ambrose Alli University Press, 2016)
2. T.S. Wilkinson & P L Bhandarkar, Methodology and Techniques of Social Research (Himalaya Publishing House, Mumbai, 16th ed. Reprint 2005), chap 1: Scientific Social Research, Chap 3: The Research Process
3. J.T. Doby (ed), An Introduction to Social Research (Stackpole, 1967) 16 et. seq.
4. Morris R. Cohen & Ernest Nigel, An Introduction to Logic and Scientific Method (Harcourt, Brace, New York, 1934)
5. William J. Goode & Paul K Hatt, Methods in Social Research (McGraw-Hill, 1952)
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7. S.N. Jain, Legal Research and Methodology, 14 Jr of Ind L Inst 487 (1972).
8. B.A. Wortley, Some Reflections on Legal Research After Thirty Years, 7 Jr of the Society of Public Teachers of Law (New Series) 249-250 (1964-1965)

9. P.M. Bakshi, Legal Research and Law Reform, in S K Verma & M Afzal Wani (eds), Legal Research and Methodology (Indian Law Institute, New Delhi, 2nd ed. 2001) 111

MODULE 3
General Research Process

Unit 1: Training the Researcher
Unit 2: Choosing the Topic
Unit 3: Major Stages in Legal Research

Unit 1
Training the Researcher

CONTENT

1.0 Introduction
2.0 Objectives
3.0 Main Content
  3.1 Training the Researcher
  3.2 Sources of information
4.0 Conclusion
5.0 Summary
6.0 Tutor Marked Assignment (TMA)
7.0 References/Further Reading

1.0 INTRODUCTION

Legal research like every area of human endeavour has its mechanics of presentation. The general principles of the various steps taken, the various know-hows or techniques applied in the process of acquiring information, and proving that the information is logic and valid is called methodology. It is intended to, in this unit, *inter alia* observe some empirical rules for the researcher.

2.0 OBJECTIVES

At the end of this introductory unit, students should be able to:
- identify the qualities of a researcher
- identify the various sources of information for a researcher

3.0 MAIN CONTENT

3.1 Training the Researcher

1. For the researcher, what is wanted is sound, publishable research, not unattainable perfection. If we are to enliven our teaching, if indeed, we are to keep it alive and to contribute to the advancement of learning; we must do, and stimulate research.
2. Research involves honest and dispassionate investigation. Authorities not read by the investigator should not be cited. He will not lift copyright or non-copyright passages from someone else's work without acknowledgement.
3. Departments should not accept a research candidate unless such departments have someone able and willing to supervise him and have adequate research materials.
4. Legal research should not of course be confined to books, articles, treatise, statutes and cases but if and when necessary, expert should be sought out in the realms of law and related field of – say, finance, commerce and government for their experience. One should see how things tick, by letter, questionnaire and if possible, by visit, carefully prepared in advance, to those involved in the legal problems of the modern world selected for research.
5. It is better to let the candidate, after he has expressed a general interest in a particular field and acquainted himself with it, suggest the topic.
6. A man must at all times have a plan around which he can arrange his material. This he could do with proper guidance from his supervisor. This brings us to the student and supervisor relationship

   To the student researcher, hear this:

   a) Make sure that you agree with your supervisor on course of study and the timing and way of arranging future interview
   b) Make sure that in one way or the other he gets to know you and the quality of your work at an early stage and has clear ideas of what you are doing and how fast – you never know how seriously or how urgent you may need his interest.
   c) If he is elusive, chase him until he finds time to attend to you.
   d) Make sure he see some written work – even if only essays – within the first term, or year, no judgement can really ever be based on a bright face, or bright talk or even on 'Outlines of Thesis' and see that he is getting something like draft of thesis, at least for Ph.D. twelve months before entry, if possible and at least eight or nine.
7. On the subject of supervision, it is suggested that a supervisor, who in any event should only undertake research in which he has a real interest, should never

succumb to pressure to take on more students than he can properly and effectively manage.

8. Whilst responsible academic work must be done individually, there are immense advantages in doing it in close touch with a group of scholars in allied topics (boredom and procrastination are the greatest dangers run by the solitary worker).
9. All relevant materials should be noted as read, and with full references.
10. Writing should not be deferred until everything has been read. (Adapted from Gasiokwu M.U, *Legal Research and Method, etc*)

SELF-ASSESSMENT EXERCISE 1

What are the advantages derived in doing academic research work in a group?

3.2 Sources of information

3.2.1 Primary sources

The sources that contain original information and observations are known as primary sources of information. Such information can be collected directly from the persons having such information or can be found in research papers published in legal periodicals/ journals, reports, theses and conference papers. Legal periodicals and journals are indispensable sources of information for a legal researcher. They contain wealth of the first hand and in-depth information on a particular point. Reports, published by Governmental or non-governmental agencies, also contain rich information on the subject of inquiry. Doctoral dissertations (theses leading to Ph.D. Degree), which offer very systematic and in-depth analysis of the subject-matter/aspect delved therein and the conclusions/opinions/suggestions based on the analysis, constitute another primary source of information. Similar is the case of conference papers.

Primary sources in legal research, therefore, are the Constitution, National Gazette, which publish Acts/Proclamations passed by Parliament (and by State Legislature), Rules, Regulations, Statutory Orders, and Directives of Administrative Agencies, and case reports that publish judicial pronouncements of different higher courts. All these sources contain rich original information/observations about the identified research problem. They are indeed indispensable for any legal researcher.

3.2.2 Secondary sources

Secondary sources of information furnish the information derived from primary sources. These sources organize the information in a systematic manner and in a planned way. These secondary sources include textbooks, treatises, commentaries on statutes, abstracts, bibliographies, dictionaries, encyclopaedias, indexes, reviews, and thesauri. Textbooks,

legal treatises, and commentaries on statutes constitute significant secondary sources of legal research. Textbooks and legal treatises offer a researcher proper idea of the subject and enable him to find several other useful sources of information on the topic of his research. They also help him in comprehending basic principles of, and judicial statements on, the topic under inquiry. Abstracts are brief statements of the contents of research articles published in periodicals and/or anthologies, without appraisal. Abstracts provide a simplified key to find relevant studies from the vast literature on the subject. Bibliographies list books and related materials on a particular subject. They contain the author's name, title, place of publication, publisher and the year of publication. An annotated bibliography provides a brief analysis of the contents.

Dictionary contains an alphabetical listing of words with their meaning, spelling, pronunciation, derivation and grammatical usage. However, with the growth of knowledge, it has not been possible for general language dictionaries to keep up with technical terms developed in the various fields. So the need for subject specific dictionaries arose. A legal researcher, therefore, can find a couple of legal dictionaries of worth consulting. The most frequently referred to, and widely used, is Black's Law Dictionary.

Encyclopaedia is a book of information in the form of condensed articles on every subject. It furnishes greater details (of the subjects dealt thereunder) than a dictionary. It provides meaning and historical background of concepts, important theories, names and references of major works. Encyclopaedia is thus the treasure house of knowledge on various subjects, including law. There are a number of encyclopaedias that may be, depending upon his subject of inquiry, of great use to a legal researcher.

Indexes are alphabetical listing of subjects and/or authors of the literature included therein. According to William A. Katz, 'Index is a detailed list of names, terms, subjects, places or other significant items in a complete work with exact page or other reference to material included in the work.' Harold Borko and Charles L. Bernier have explained it more lucidly and comprehensively. According to them, the artificiality created by the indexing system is a mental process for quick retrieval of information. In their words, 'indexing is the process of analysing the informational content of records of knowledge and expressing the informational content in language of the indexing system.' Index, thus, helps to quickly recall or retrieve most relevant information and thereby to establish a contact between producer of idea or information (i.e. author) and consumer of information (i.e. reader) through organizer of information (i.e. indexer/librarian). It not only helps the reader to locate the required information immediately but also facilitates the identification or selection of the desired documents and provides comprehensive overview of the subject.

A review is an integrated and organized discussion of the literature pertaining to a well-defined subject. It usually covers a limited period of time.
A thesaurus is a book of words grouped by ideas. Its purpose is to help identify synonymous and find the exact word. Roget's Thesaurus accomplishes this task for the English language. With an ever-increasing list of technical words, Thesauri are also available for many disciplines, including law. These are compilations of the vocabulary used to identify concepts in the literature within a given area.

3.2.3 Tertiary sources

Tertiary sources include directories, subject guides and Union lists. There are numerous scientific directories that provide list of journals, scientists, universities. They list their information quite like the telephone directory. These help the researcher to tap appropriate journals and expert advice on the topic of research. Union list is the list of all the journals that are available either in the given library (union list for the library) or all the libraries in the country (national union list). The union list for a particular library tells you the journals the library subscribes to, the issues of these journals that are available and the missing volumes. Union lists are invaluable in tracking down a journal. If a journal you need is not available in your local library the national union list will help you locate a library in the country that has a copy.

SELF-ASSESSMENT EXERCISE 2

Discuss primary and secondary sources of information.

4.0 Conclusion

A law teacher has to keep a vigilant track of developments in the law, for making his lectures and deliberations in classroom contextually and contemporarily relevant. He has also to make himself familiar with the legislative intent and policy in the law books, and their reason *d'état* so that he can help his students to appreciate the rules in systematic and comprehensive manner. A law teacher who always reads out lecture notes to his students is not helping the students' independence in critical and analytical mind development. Legal education is now learners based. The lecture environment must be interactive enough to instigate interrogative exercises. Above all, every topic treated ought to generate a research topic or two from which class discussions and term paper may arise. It is the duty of students to watch out for these attributes.

5.0 Summary

In this unit, you have learnt how to:

- identify the qualities of a researcher
- identify the various sources of information for a researcher

6.0 Tutor Marked Assignment

1. What are the major considerations that need inform formulating a research problem?
2. Discuss different sources of information and comment on their utility in research.

7.0 References/Further Readings

1. Gasiokwu M.U, *Legal Research and Methodology* (Jos – Nigeria; Fab Educational Books, 1994)
2. Luhman, *Sociological Theory of Law* (1972, English translation, 1985), cited by Khushal V. & Philipus A's *Legal Research and Methods* supra at 3.
3. C.R. Kothari, *Research Methodology: Methods and Techniques* (New Age International Publishers, New Delhi, 2nd ed., 2001, Reprint 2007)2.

Unit 2

Choosing the Topic

CONTENT

1.0 Introduction
2.0 Objectives
3.0 Main Content
   3.1 Novel Cases
   3.2 Unresolved Issues
   3.3 Journal Articles
   3.4 Initial Reading
   3.5 Second Reading
   3.6 Critical Reading
4.0 Private international law distinguished from public international law
5.0 Conclusion
6.0 Summary
7.0 Tutor Marked Assignment (TMA)
8.0 References/Further Reading

1.0 INTRODUCTION

The purpose of this section is to assist students who are writing a research paper, research project, or dissertation, and need help in selecting a topic and developing them into full research work.

2.0 OBJECTIVES

At the end of this unit, students should be able to choose a topic for their research using the various resources available.

3.0 MAIN CONTENT

There are two ways in which one arrives at a topic;

a) The department or lecturer suggests a topic
b) One makes his own choice

a) The first one has a great advantage, in the sense that the topic suggested by the lecturer or the department for a student may have good chances of being researchable.
b) On the other hand, the main pleasure to be derived from research is to immerse oneself in a topic in which one is rarely interested. But this is not a simple task. Students have failed to complete their research, not because they were not serious,

but because their topics were probably not suitable for research. The topics are either too large or necessary materials are not available.

At the undergraduate level, students are advised to consider the following before choosing there topics:

(i). The complexity of the subject matter

(ii). The time factor, and

(iii). Available materials

When selecting a topic, make sure that it is interesting to you and your audience, well-defined, manageable, novel and worthy of research. If you need help finding a research topic you can start by; examining legal developments, searching for a novel case or a legal issue where courts have split on their interpretation of the law, browsing recent scholarly publications, mining topic ideas, including calls for papers and writing competition, talking to people, keeping up to date with current affairs e.g., news items can generate topic ideas. The law library has numerous resources listed below to assist you in selecting your topic. If you get stuck or need customised advice, make an appointment with a law librarian, your course tutor, facilitator or senior members of the bar.

3.1 Novel Cases

A common approach to finding a topic is to focus on a case that raises a novel issue of law. To find these cases search for legal development or browse recent cases before the Supreme Court or highest appellate court in Nigeria and other countries such as High Court of Australia, Supreme Court of Canada, Supreme Court of New Zealand, Supreme Court of the UK, Supreme Court of the US. The following blogs also contain valuable information about High Court/Supreme Court decisions:

a) **Opinions on High** – University of Melbourne Law School's blog on decision from the High Court of Australia.
b) **The Court** – Osgood Hall Law School's blog on decisions from the Supreme Court of Canada
c) **New Zealand Supreme Court Blog** – University of Auckland's blog on decisions from the Supreme Court of New Zealand
d) **UKSC Blog** – United Kingdom Supreme Court blog written by influential solicitors and barristers.
e) **SCOTUS Blog** – United States Supreme Court blog written by lawyers, law professors, and law students.

In addition to all this, students are strongly advised to form the habit of reading and studying Supreme Court reports in Nigeria to get acquainted with the vocabulary of law,

decided cases, and dissenting opinions. A student who does not have a voracious appetite for law reports will only have pedestal knowledge of law – being unable to discuss law with in-depth analysis and professional accuracy.

3.2 Unresolved Issues

In the course of studies, certain topics or issues must have struck the student as interesting, either because of their controversial nature or because such issues have not received enough discussions among researchers, or for various other reasons. Students are advised to pick up such issues, and not just a whole subject in a course. Another common approach to finding a research topic is to examine an unresolved law issue arising from any of the topics in your study modus in any law course. Unresolved legal issues can occur when courts have splits in their interpretation of the law, leaving the ultimate meaning of the law unresolved. In Nigeria this is known as a 'split decision' while in the US it is known as a 'circle split' because it is based on the Supreme Court and on the federal circuit courts interpreting the same legal issue differently respectively.
A research topic may decide the split, identifying any issues that may be influencing the courts, and propose a way to distinguish the situations or resolve the discrepancy. For example, there was a split decision in the case of *Donahue v Stevenson* where the neighbourhood principle was expounded, thus birthing the development of another branch of law called 'consumer protection law'. These topics can be very timely and relevant. However if the discrepancy is resolved before your project or dissertation is completed, the topic can be rendered entirely obsolete. Because such topics are popular in the US, there are resources dedicated solely to tackle circle splits including the following:

- **Seton Hall Circuit Review**: A law review dedicated to covering the United States federal circuits. The section entitled 'Current Circuit Splits' provides brief summaries of the circuit splits identified in federal courts of appeals opinions.
- **Circuit Splits Blog**: A blog that provide the latest news and analysis on divisions between US circuit courts.

3.3 Journal Articles

A good place to get ideas for a good paper topic is to examine essays in recent legal development in journal articles, e.g. the NOUN Law Review. There are numerous other law journals. Basically every law faculty has a law journal or two. Each department in most cases also have their own journals. Books of reading, which are recent developments, have assumed the resipotry of current and contemporary issues in law. Students should not shy away from them. Even if you have a topic in mind, use these resources and the following resources to learn more about any new development within

that area: newspapers, blogs and current awareness resources, such as the ones below, are usually the first to report on a development issue of law in specific areas.

(i). **International Trade Daily (Bloomberg BNA)**: This online legal newsletter reports on a wide range of topics. You can search for topics alphabetically under 'recent topics' or review recent reported cases under 'finding tools'. Additionally, this site provides PDF and PowerPoint guides for finding a paper topic.

(ii). **CCH Online –Intelliconnect** – This site contains current awareness, information on a wide number of areas with particular strength in tax, financial and business related topics.

(iii). **Lexis Law Review Insight**: This database contains summaries of selected online law review articles that discuss certain hot topics of the day, with direct links to those articles. To access this database, go to: Legal>Secondary Legal>Emerging Issues Analysis>Lexis Law Review Insight

(iv). **Westlaw – Topical Highlights**: Westlaw's Topical Highlights database contains articles on current legal developments arranged by topic areas. To access, go to: Directory>Legal Periodicals & Current Awareness>Westlaw Highlights & Bulletins>Westlaw Topical Highlights.

(v). **Keep up-to-date**: This University of Melbourne Law Library site contains information on various alerting tools for keep up-to-date with the latest legal developments. You can set alert for cases, Australian legislative activity, domestic and international legal news and developments, journal articles, and books.

(vi). **Melbourne Law School**: Legal Academic Writing Resources – The Legal Academic Skills Centre offers valuable information on formulating your own essay topic.

(vii). **University of Melbourne Courseworks**: Designed for graduate students, this University of Melbourne site provides valuable information on selecting a minor thesis topic.

(viii). **University of Melbourne's Academic Interactive Resources Portal (AIRport) – Essay Topics**: Created for University of Melbourne students, this site provides examples and exercise for turning your research topic into a question.

(ix). **Guide to Writing a Student Law Review Note**: Essay by Professor Leora Harpaz, Western New England College School of Law.

(x). **Lexis tutorial**: Researching for Law Review or Journal (PDF): A guide to law review research using Lexis resources, including a section on 'Finding a Compelling Note Topic'.

(xi). **Westlaw Tutorial – Guide to Law Review Research (PDF)**: A guide to law review research using Westlaw resources, including a section on 'Selecting a Topic'.

3.4 Initial Reading

Before finally adopting a topic for research, it is necessary for the student to take preliminary readings in the area of intended research. This is important in order to ascertain whether or not the materials for research are available, and also to learn more about the dimensions of the subject so as to reduce the topic to a manageable proportion if necessary.

3.5 Second Reading

A general reading of the standard reference work such as the encyclopaedias, books on the field of study, journal articles, case study and review will give the student an insight into various aspects of his subject and enable him to judge whether or not it can be handled in the time available.

3.6 Critical Reading

A critical reading of all the materials gathered is of vital importance. This is because what you read might not be as straightforward as you think. When reading publications of importance to your research, carefully examine what has been put in and seek for what is left out. By doing so, you will be able to see if the author of the article has presented enough materials, whether his arguments are logical and finally, if the conclusions are justified by the evidence supplied. This will help you make up your opinion of the said work. To read critically and comprehend, one needs concentration. A research student must therefore make time to read, and also develop a variety of reading techniques and a facile ability in their use. Reading is a skill that requires constant practice and a certain amount of incentive to do better.

The next step is to draw up preliminary outline. This preliminary outline is tentative and serves as the basis for a useful discussion with your tutor about the appropriate research model/technique to employ against the backdrop of your topic. Once this consultation with the supervisor has taken place, the student can embark on the next part of his task – the research.

SELF-ASSESSMENT EXERCISE

What are the advantages derivable from choosing your own research topic?

4.0 Conclusion

The ability to develop a good research topic is an important skill. It depends upon the subject and required length of a research assignment. In conclusion, here are some tips:

- narrow your topics to something manageable
- brainstorm for ideas
- read general background information
- focus on your topic
- make a list of useful keywords
- be flexible, and last
- define your topic as the focus research question.

5.0 Summary

In this unit, you have learnt how to choose a topic for their research using the various resources available

6.0 Tutor Marked Assignment

1. What factors should a student consider before choosing a research topic?
2. Write a brief note on the challenges and prospect of choosing a topic in legal research.
3. Think and discuss the reason(s) for such challenges, and also discuss the potential solutions that can be used to address such challenges.

7.0 References/Further Readings

1) ***Academic Legal Writing*** – Eugene Volokh: Call Number: K 101 VOLO, ISBN: 9781599417509, publication date: 2010. This book contains two chapters on selecting a topic; chapter I – Finding What to Write About (The Claim), and chapter XXI - Writing Seminar Term Papers.
2) ***Legal Writing*** – Lisa Webley: Call Number: K 101 WEBL, ISBN: 9780415491914; publication date: 2010; chapter 4 entitled ‘Writing Extended Essays and Dissertations’ provides a 14-stage process for writing your research paper, including stages for establishing your topic, narrowing down your topic, and turning your topic into a question.
3) ***Scolarly Writing*** – Jessica L. Clark; Kristen E. Murray, Call Number: K 101 CLAR, ISBN: 9781611630176; publication date: 2012; chapter 2 of this book contains a section entitled ‘Thinking: Finding Your Topic and DevelopingYour Thesis’.

4) ***Scholarly Writing for Law Students, Seminar Papers, Law Review Notes and Law Review Competition PApaers,4th ed*** – Elizabeth Fajans; Mary R. Falk, Call Number: K 101 FAJA, ISBN: 978031427203; publication date: 2011; this book provides advice on choosing a topic and developing a thesis in chapter 2.

Unit 3
Major Stages in Legal Research

CONTENT

1.0 Introduction
2.0 Objectives
3.0 Main Content
    3.1 Major Stages in Legal Research
    3.2 Identification and formulation of a research problem
    3.3 Review of literature
    3.4 Formulation of a hypothesis
    3.5 Research design
    3.6 Collection of data
    3.7 Analysis of data
    3.8 Interpretation of data
    3.9 Research report
4.0 Conclusion
5.0 Summary
6.0 Tutor Marked Assignment (TMA)
7.0 References/Further Reading

1.0 INTRODUCTION

Invariably every research begins with a question or a problem of some sort. The aim of research is to know 'something more' about 'something' or to discover answers to meaningful questions through the application of scientific procedures. Legal research is not an exception to this general precept of research. However, undertaking and executing legal research, as a systematic inquiry, is a complex process. It involves a three-stage process. Each one of them warrants skill. The processes are research planning, research implementation, and presenting of research findings.

2.0 OBJECTIVES

At the end of this introductory unit, students should be able to understand the various stages in legal research

3.0 MAIN CONTENT

3.1 Major Stages in Legal Research

Research planning requires the necessary sub-skills for: fact collection, legal analysis, legal knowledge, problem identification, legal analysis, fact analysis, further fact collection, identification of avenues of research, and generation of key (search) words. Research implementation, as the second-stage processes, involves the skills pertaining to: identification of problems for resolution, identification of relevant research source materials, location of the source materials, effective use of the source materials, analysis of research findings, application of findings to the identified problem(s), and identification of further problem(s). While the third-stage process, i.e. presentation of research findings, requires the skills necessary for: identification of the (research) recipients' needs, selection of appropriate format or framework, use of clear and succinct language, and use of appropriate language-style (informatory, advisory, recommendatory, or demanding). A cumulative reading of these three-stage processes of legal research and of their components leads to the following major processes that, like any other research, involve in legal research. They may be presented in a flowchart as under:

Identification and Formulation
of a Research Problem
↓
Review of Literature
↓
Formulation of a Hypothesis
(where feasible)
↓
Research Design
↓
Collection of Data
↓
Analysis of Data
↓
Interpretation of Data
↓
Research Report

(Adapted from Khushal V. and Philipus A., *Legal Research and Method*)

These stages are not mutually exclusive. They overlap continuously rather than following the prescribed sequence strictly. The order sketched above is meant to provide a procedural guideline for research.

A brief description of each one of the steps is necessary here to put the legal process in the right perspective and to highlight, in brief, their significance and role in legal research.

SELF-ASSESSMENT EXERCISE 1

Briefly comment on the requirement for research planning skills?

3.2 Identification and formulation of a research problem

Identification and formulation of a research problem constitutes the starting phase of research. It is the first and foremost step in any research undertaking. In fact, success of research depends upon the selection of an apt research problem and its proper formulation. An ill-identified and deficiently formulated research problem invariably makes the researcher subsequently to lose his 'interest' in the problem. It also lands him in a number of unanticipated difficulties at latter stages that may even compel him to abdicate his research half a way. A research is goal-directed. If the goal itself is unknown or ill-defined, the research will lead the researcher nowhere. Thus, it becomes necessary to have a well-defined and precise research problem for meaningful research. It is an old and wise saying that 'a problem well put is half solved'.

However, identification and formulation of a research problem is not an easy task. In most scientific works, the difficulty lies in framing problems rather than in finding their solutions. 'It is often more difficult to find and to formulate a problem', observed Merton, a renowned sociologist, 'than to solve it'. A researcher, therefore, has to constantly remind himself that he needs to put his research problem or research question in a precise way and to phrase it in such a way that it becomes viable and allows discovery of new knowledge. Before formulating a research problem, it is, however, necessary for the researcher, in sequence, to identify an area of his general interest, an area or subject-matter of his special interest from the area of his general interest, and an aspect from the subject-matter of his special interest that he would like inquire into. Then he has to do a lot of reading on the aspect identified for further inquiry. For example, a scholar of law interested in undertaking research in public law that happens to be an area of his general interest. He has then to identify an area of his special interest from public law, say Constitution. There may be an umpteen number of aspects of the Constitution that are of worth probing. Let us assume that he is interested in the Chapter Three of the Constitution dealing with Fundamental Rights and Freedoms. This is not enough for him

to formulate a research problem. He needs to select a Fundamental Right that interests him more and from this, he has to identify an aspect of the fundamental right that, according to him, deserves further probing. He has to read a lot on, and about, the aspect before he ventures into formulating a statement of problem for his further inquiry. After reading about the aspect, he is required to put in a lot of thinking and intellectual input in phrasing the aspect in an intelligent and precise propositional form so that he can get something meaningful out of it. It needs to put in such a way that it signifies the focus of inquiry as well as its direction.

3.3 Review of literature

Once the research problem is formulated, the researcher needs to undertake an extensive survey of literature connected with, related to, and/or having bearing on, his research problem. This is the process whereby the researcher locates and selects the references that are relevant for his inquiry. A scholar of law, at this stage, is expected to carefully trace and lay his hands on standard textbooks, reference books dealing with or having bearing on the research problem, legal periodicals (to locate research articles written, or authoritative comments made, on the subject or its allied subjects), case reports (to get familiarize with the thitherto judicial exposition of the problem), conference/symposium/seminar proceedings, if any, (to acquaint with different dimensions highlighted in, delved into, or emerged from, the conference/symposium/seminars, Government or Committee Reports (to appreciate and understand perspectives of the experts in the field and of policy-makers), and general web pages (to know latest emerging perspectives and illustrative examples). The researcher has also to take special care to locate earlier studies done on the problem and to have a quick reading thereof. However, in the recent past, the literature review process has changed dramatically with access to computers and specially World Wide Web (www) page. Though we may rely upon almost completely on the Web and search engines, let us remind ourselves of two caveats. First, searching the www is, by itself, insufficient for literature review. Although many leading journals and other published information from recognized sources are now available on the Web, it does not have all the available literature. Using the Web can be the basis of literature review but it needs to be balanced with material-very new-published in journals and periodicals that are not put on the Web and the publications that might not have been caught by search engines. Further, local country's materials from marginalized groups may likely to be under-represented or un-represented on the Web. Secondly, it is not always evident that the information put on the Web is presented accurately.

Literature review makes the researcher conversant with the materials available on his research problem and their 'place', the thitherto explored (and unexplored) aspects/dimensions of the problem, theoretical bases of the problem, and relevant theories in the field.

Literature review, thus, helps the researcher to know and to have his preliminary impressions about:

1. The thitherto explored and unexplored aspects/dimensions of the problem and the explanations offered or issues raised without offering solutions therefor.
2. The gaps, if any, in the thitherto-offered explanations of the problem/its dimensions and their inter-relationship and adequacy in explaining the problem/its dimensions.
3. Theoretical and conceptual issues raised, with or without suggesting solutions therefor.
4. The operational framework and research techniques used in the previous research, and their propriety.

Literature review enables the researcher to know what kind of data has been used, what methods have been used to obtain the data, and what difficulties the earlier researchers in collecting and analysing the data have faced. Main purposes of literature review, thus, are:

1. To reveal what has been done and written on the topic in the past.
2. To 'map', with their limitations, the thitherto used research techniques,
3. To know the kind of material/data used and their sources.
4. To appreciate adequacy (or otherwise) of the data used for drawing the conclusions.
5. To know the central arguments advanced and the concepts revealed and discussed earlier.
6. To acquaint with the patterns of presentation of these arguments and the concepts and the relationship established (or attempted to establish) between these arguments and the concepts.
7. To, in the light of the earlier studies, findings, and the problems encountered, rephrase, with precision, his research problem/question, and to devise appropriate research techniques for smooth operation of his inquiry.

SELF-ASSESSMENT EXERCISE

Comment upon the significance of review of literature in research.

3.4 Formulation of a hypothesis

After extensive literature survey, researcher, in the light of the survey, has to re-phrase or reformulate his statement of problem, if necessary. A statement of problem, depending

upon research goals and the nature of inquiry involved, may take form of either a mere statement or a proposition indicating possible relationship between two or more variables or concepts, the validity of which is unknown in the beginning. Such a proposition is known as hypothesis. Hypothesis, thus, is merely a tentative assumption made in order to draw and test its logical or empirical consequences. It is a tentative, testable statement. A statement to be a hypothesis must be capable of being tested. If its validity cannot be put to empirical confirmation, a proposition, howsoever attractive or interesting may be ceases to be a hypothesis.

The manner in which a hypothesis is formulated is very important as it gives significant clues about the kind of data required, the type of methods to be used for collecting data, and the methods of analysis to be used. It guides the researcher by delimiting the area of research and keeps him on the right track throughout his investigation. It sharpens his thinking and focuses attention on the more important facets of the problem under inquiry. Therefore, a hypothesis, to be worked with, needs to be precise, specific, and conceptually clear. It must have empirical referents. It must also be related to available research techniques. However, it is important to note that hypothesis is not required in all types of legal research. A researcher, for example, indulged in exploratory or descriptive legal research is not required to formulate hypothesis. Statement of problem in the form of hypothesis, invariably, is required in socio-legal research or empirical legal research, wherein the researcher is interested in finding 'link' between a 'legal fact' and a 'social fact' or is interested in assessing 'impact of law'.

3.5 Research design

After defining a research problem or formulating a hypothesis, as the case may be, the researcher has to work out a design for the study. Research design is the conceptual structure within which research is conducted. It is a logical systematic planning of research. The term research design refers to the entire process of planning and carrying out a research study. It is the process of visualization of the entire process of conducting empirical research before its commencement. Research design is a blue print of the proposed research. However, the blue print is tentative as the researcher may not be able to foresee all the contingencies before he starts his investigation. He is allowed to meet these contingencies when he encounters them in his research journey. Research design helps the researcher to identify in advance the kind of data he requires, the means to collect them, the methods to be used for analysis and interpretation of the data, and presentation of his findings with more accuracy. Research design, thus, helps him in minimizing the uncertainties, confusion and practical hazards associated with the research problem. It helps in enhancing efficiency and reliability of his findings.

3.6 Collection of data

After formulating the research problem (or reformulating it in the light of literature review) and preparing a blue print of the research, the researcher has now to take a decision about the technique(s) to be employed to collect the requisite information. He has to, from a wide range of methods of data collection, ranging from interviews to observations to document analysis, opt for the most appropriate method(s) for collecting data. However, it is not always easy to take the right decision. It is very crucial decision having far-reaching consequences on the outcome of research. The research method(s), which he chooses, will ultimately determine the quality and propriety of the data and in turn, of the consequential results. In a way, the selected methods of data collection determine the fate of his research. While selecting method(s) of data collection, the researcher has to take into account the objectives of his research and the nature and scope the inquiry. Data can be primary or secondary. Data collected by the researcher, by using primary sources, is primary. The data already collected by some other agency and available in some published form is secondary. In either case, the researcher has to select an appropriate method.

3.7 Analysis of data

After the data have been collected, the researcher needs to turn to the task of analyzing them. Data, in any form, are raw and neutral. Their direction and trend is generally highlighted and reflected with the help of analysis and interpretation.55 Analysis of data comes prior to interpretation. However, there is no clear-cut dividing line between analysis and interpretation. Analysis is not complete without interpretation and interpretation cannot proceed without analysis. They are inter-dependent. Analysis of data involves a number of closely related operations, such as classification or categorization, coding, and tabulation. Classification or categorization of data is the process of arranging data in groups or classes according to their resemblance or affinity. The researcher has to classify his data into required categories. The categorization has to be based on the problem under study or the hypothesis formulated. The category must be exhaustive and suitable for classifying all responses. They must be distinct, separate, and mutually exclusive. Coding involves the assigning of symbols or numerical to each of the category of responses so that raw data can be counted or tabulated. Tabulation is a means of recording classification in a compact form in such a way to facilitate comparisons and show the involved relations between two or more variables. It is a sort of arrangement of data in requisite rows and columns.

3.8 Interpretation of data

Interpretation is considered as one of the basic components of research. It refers to the task of drawing inference from the collected data. The inference may be deductive or inductive. The former involves inferences from generally abstracts propositions to particular ones, while the latter is inference from particular propositions to general propositions.

Through interpretation, the researcher attempts to search for broader meaning of research findings. He tries to establish link between the results of his inquiry with those of another and to establish some explanatory concepts. He, through his interpretation, endeavours to find and understand the abstract principle that works beneath his findings. Interpretation opens up new avenues for intellectual adventures and stimulates the quest for more knowledge. The process of interpretation may quite often trigger off new questions that in turn may lead to further researches. In fact, the usefulness and utility of a research lie in proper interpretation of the collected facts.

One should, however, remember that even if data are properly collected and analysed, wrong interpretation would lead to inaccurate and misleading conclusions. Interpretation, therefore, must be impartial and objective. A researcher should explain why his findings are so, in objective terms. He should also try to bring out the principles involved behind his inferences. However, the task of interpretation is not an easy task. It requires a great skill. It is an art that one learns through practice and experience.

3.9 Research report

The last phase of the journey of research is the writing of research report. It is a major component of research. Research remains incomplete until report is written. Through research report, the researcher communicates with his audience. It is an account of journey of the researcher. However, it is not a complete description of what has been done during his research. It contains only an account of the statement of problem investigated, the procedure adopted and the findings arrived at by the investigator. It contains the significant facts that are necessary to appreciate and understand the generalizations drawn by the investigator. A researcher is, thus, expected to, through his research report, share with his audience the research problem investigated, the methods used for the collection of data, their analysis and interpretation, and the results or findings of the study. The purpose of research report is to convey to the interested persons the whole result of the inquiry in sufficient details. Contents and style of the report therefore depend upon the kind of audience it intends to address. Therefore, there cannot be hard and fast rules pertaining to the contents and format of a research report. Nevertheless, research report need to be presented in such a manner that its readers grasp the context,

methodology and findings easily. A research report generally needs to contain in it the requisite information about: (i) the problem undertaken for investigation and objectives thereof, (ii) methodology adopted in the inquiry, and (iii) analysis and inferences of investigation and their theoretical and practical implications, if any.

A general outlay of legal research report has three major components. They are: Preliminary Pages, the Main Text, and the End matter. In the first part, a legal researcher has to put Acknowledgement, Preface, Table of Contents, Table of Cases, Table of Statutes, Abbreviations, and List of Tables. While in the second part of the research report, he has to have different segments of his research in the form of chapters, with appropriate captions, starting from 'Introduction' to 'Conclusions and recommendations'. Each chapter has to have necessary headings and sub-heading with proper documentation in the form of footnotes. Chapters should be written in concise and simple language. While at the end of the report, he has to place Bibliography, different texts, like statutory provisions referred to in the main text, 'interview' or 'questionnaire', etc. used by him for data collection, in the form of Annexures, and Index. Originality and clarity are the two vital components of research report. It is the ultimate test of ones analytical ability and communication skills. It is an exercise involving the organization of ideas. Reporting the research, thus, requires skills somewhat different from those needed in the earlier phases of research.

4.0 Conclusion

It is a common error among young researchers to confuse formulation of a research problem, which is the same thing as research questions, with research topic. Research questions usually follow a background of study. Students should note also that there can be more than one question in one topic or dissertation.

5.0 Summary

In this unit, you have learnt how to understand the various stages in legal research.

6.0 Tutor Marked Assignment

1. Briefly describe the various steps involved in a research process.
2. Why does one formulate a research problem?
3. What are the major steps that need to be followed before formulating a research problem?

7.0 References/Further Readings

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