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COURSE GUIDE

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MODULE 1 PLANNING RESEARCH

UNIT 1 TYPES OF RESEARCH

CONTENTS

1.1 INTRODUCTION

In this unit we are concerned with the nature and types of research and the suitability of each type for certain objectives. Research is undertaken with diverse motives ranging from pure theoretical studies to applied research.

Sometimes research is motivated or guided by parameters set by third parties as for example a doctoral thesis or a research project sponsored by a Research Grant. Endeavor in the course of your study to identify the research type that fits the initiation of legislation.

1.2 LEARNING OUTCOMES

By the end of this unit you should be able to:

- identify and recognize the main typologies of research
- familiarize yourself with the broad characteristics of the various types and
- recognize the utility of each type and hence determine in a given situation which of the methods is preferable.

1.3 PLANINING RESEARCH

1.3.1 Types of Research

Importance of Classification

There is need to identify the type of research undertaken because the results and use of such results are largely dependent on the type and nature of research undertaken.

In addition to this the researcher is better able to organize his findings once he understands the nature of the inquiry. From what has been said so far it is apparent that the type of research embarked upon is to a large extent shaped by the purpose and objectives of the research, sometimes too, funds or constraint of time may determine the type of research on a subject. For example, the lawyer who is after the strengthening of a particular line of argument in court is likely to be more persuaded by the approach which focuses on reviewing cases and statutes in order to find answers to a legal issue.

On the other hand, the legal researcher who is called upon to research the suitability of a proposed law in Nigeria will have to go beyond cases and existing statutes in the study. Research can be broadly classified into the doctrinaire and empirical forms. Other forms such as pure research, applied research are subsets of one or both of these broad types.

SELF ASSESSMENT EXERCISE 1

How can you identify the type of research suitable for a proposed study?

1.3.1.1 Doctrinaire Research

This is a research which is concerned with ascertaining the consequence; usually legal; of a fact situation. It seeks information that is already in the public domain; that is public knowledge. This does not mean that such information is readily available; more often than not the reverse is the case. This type of research is based on preliminary suppositions. Primary sources seek to establish the validity of these suppositions while secondary sources tend to support them.

Doctrinaire research is the primary research option of the legal practitioner as it directly enquires into the state of the law shorn of arguments, or value factors. It is, in this sense, practical research as distinct from pure or applied research.

SELF ASSESSMENT EXERCISE 2

In a research study on the validity of marriage contracted between two persons of the same sex outline possible preliminary suppositions and the primary and secondary sources of information.

1.3.1.2 Empirical Research

This is research which seeks to evaluate or test a given hypothesis as against verifiable factors in society, such as perceptions or existing procedures. A good example of this occurs where a researcher pursues an inquiry into whether more female children of school age actually finish high

school or college. In order to research this issue, the researcher would in addition to official records of Education Authorities also require interacting with educational administrators and parents and students in order to find reasons or motives explaining the statistics presented by the official records.

This type of research is a good resource for law reform or policy formulation. However, in order to have maximum value, the results of surveys of perceptions or practices should be analyzed and subjected to wide discussion or scrutiny. Usually a conference or workshop is the best forum to present results of such studies. Social scientists prefer this method. Lately, legal research has embraced also the empirical form of research although this remains of little value in terms of advocacy or trial.

SELF-ASSESSMENT EXERCISE 3

Determine the best form of research in this situation: The National Assembly is considering an amendment to the Criminal Code in terms of repealing the death penalty. Those opposing the bill argue that the death penalty is the most effective way of deterring the commission of murder and other heinous crimes. How would you go about researching the merits and de-merits of the proposal?

1.4 SUMMARY

. This unit discussed the main forms of research, their nature and relative advantages. The main forms are the doctrinaire and empirical research. The choice of either or both is largely determined by the scope and objectives of the research. There are other subsets of the two. The unit also foreran discussion on the objectives and goals of research in the next unit.

1.5 REFERENCES/FURTHER READINGS/WEB SOURCES

Ayua I.A. and Guobadia, D.A. (Eds) (2001). Law and Research Methodology, Lagos: NIALS.

Gasioukwu M.O (1993). Legal Research and Methodology: The A – Z of Writing Thesis and Dissertation in a Nutshell, Jos: Fab Educational Books

1.6 Answer to Self-Assessment Exercise

UNIT 2 OBJECTIVES AND GOALS OF RESEARCH

CONTENTS

2.1 INTRODUCTION

In this unit we examine the purposes for which research is carried out. Obviously there are diverse motives for carrying out a research study. This unit is concerned with the primary goals of research and not secondary motives such as that the research is motivated by a grant competition or requirement for the award of a degree.

2.2 LEARNING OUTCOMES

By the end of this unit you should be able to:

- Familiarize yourself with the various objectives that motivate research studies and factors to consider in accomplishing them;
- Set research goals and work out plans for their actualization.

2.3 OBJECTIVES AND GOALS OF RESEARCH

2.3.1 Goals and Objectives of Research

The objectives of any research, the key variables of the study and how one affects the other must be stated in clear concise terms. In the particular context of legislation, the objectives of research may take the following forms:

2.3.1.1 Ascertaining the legal status of legislation

Research may be targeted at establishing validity or otherwise of a specific legislation. Research in these circumstances can take the form of verifying the status of a particular law, for example whether it has been repealed or validly enacted. The researchers' scope of enquiry is invariably restricted to primary sources e.g. statutory provisions. The result of this research may lead to the enactment of new law or the amendment or repeal of existing law.

SELF ASSESSMENT EXERCISE 1

How many Statutes were amended by the National Assembly between 2004 and 2007?

What proportion of the Bills proposed during this period is represented by the number of amending statutes?

2.3.1.2 Literature Review

Here the researcher is concerned with ascertaining the state of the law using statutory and case law materials. It is advisable before embarking on any research study to do a literature review in order to sharpen the focus of the proposed research. A literature review can be compared with the bill of Quantities that a Quantity surveyor would normally prepare before a major building construction project. It gives the researcher a bird's eye view of the components of the research project and the extent of work required to be done.

2.3.1.3 Application of law to a fact situation

In this instance the research is directed at finding answers to a particular problem which may or may not have crystallized. This is the most common form of legal research. The scope of research extends beyond statutes to case law and treatises. It may extend to a review of a wide range of published materials depending on the complexity of the fact situation.

SELF ASSESSMENT EXERCISE 2

Can you recall how the Nigerian Supreme Court resolved the question of what constitutes two-thirds of nineteen states?

2.3.2 Testing the Validity of One or Several Hypothetical Suppositions

Theoretical study or views are greatly enriched by research. Empirical research can support or discredit a theory. For example, it is generally assumed that the death penalty is a strong deterrent to commiting murder or armed robbery; however research has shown that increasingly some

criminals take intoxicants and become more vicious in the course of committing armed robbery attacks because they know their own lives are at stake if caught.

2.4 SUMMARY

Research is driven by different objectives. The researcher must clearly state the objectives guiding the research. The failure to do so invariably lead to confusion in the analyses of the research findings

2.5 REFERENCES/FURTHER READING/WEB SOURCES

Gasioukwu, M.O (1993). Legal Research and Methodology: The A – Z of Writing Thesis and Dissertation in a Nutshell, Jos: Fab Educational Books

Ayua I.A. and Guobadia, D.A. (Eds) (2001). Law and Research Methodology, Lagos: NIALS.

2.6 ANSWER TO SELF-ASSESSMENT EXERCISE

UNIT 3 ANALYSIS OF RESEARCH PROPOSAL

CONTENTS

3.1 INTRODUCTION

In this unit our focus is on how to choose a research topic and approach its study in such a way as to bring out the relevant and cogent aspects of the study. This is invariably determined by the objectives of the research – a subject considered in the preceding unit. The researcher must strive to sharpen the inquiry in such a way that the objective and proposed methodology are clearly outlined.

3.2 LEARNING OUTCOMES

By the end of this unit you should be able to:

- Deduce from major or fundamental propositions, minor rationalizations that can form the bases of further studies.

3.3 ANALYSIS OF RESEARCH PROPOSAL

3.3.1 Analyzing the Research Topic

3.3.2 Choosing a Theme

This is the first step in any research effort. The choice of a topic is often complicated by the inability to ask critical questions about given situations. A research inquiry into the features of water for example can probe further the proposition that “water is wet” by asking whether “wet” is the same as “cool” and further whether “dry” cannot also be “cool.” In short, one of the easiest ways of framing a research topic is to pose questions which go beyond generally assumed beliefs on the topic.

Sometimes the process may entail a prediction based on certain variables; this is what is called the research hypothesis. Although a researcher's hypothesis may be proven or disproved in the course of research, it must raise sufficient questions worthy of study. These questions are generated in the ways that we discuss next.

3.3.3 Preliminary Enquiry or Review

The researcher's hypothesis should be subjected to preliminary analysis using any of the following options:

(i) Discussion with colleagues or other professionals

(ii) Literature review which looks at the available published evidence or application of relevant laws or concepts. Apart from this the literature review familiarizes the researcher with previous research on the subject and assists him in situating the proposed research in proper context thus avoiding repetition.

(iii) Critical self-reflection, which in the light of results of discussion or the readings, reveal the need to restrict the scope of the enquiry or re-evaluate available resources

In the course of this preliminary enquiry the focus of the study is likely to be refined several times in a bid to articulate sharply the focus, identify the research tools and establish time-lines.

3.3.4 The Research Proposal

The final stage of the analysis is the articulation of the research proposal. This is increasingly becoming important in view of competing demands for research funds. A good research proposal should outline in clear terms:

(a) state the justification for the research

(b) pose the subject matter of enquiry as well as the hypothesis

(c) outline previous research, if any

(d) the research methodology

(e) objectives and intended results

(f) financial estimates (budget)

(g) whether and if so, how research results will be disseminated

3.4 SUMMARY

In this unit we learnt about an important preliminary step before commencing research. You learnt that analysis is the process of subjecting a proposed research topic to critical review and refinement. You should now be able to deduce from major or fundamental propositions, minor rationalizations that can form the bases of further studies.

3.5 REFERENCES/FURTHER READINGS/ WEB SOURCES

Gasioukwu, M.O (1993). Legal Research and Methodology: The A – Z of Writing Thesis and Dissertation in a Nutshell, Jos: Fab Educational Books

Ayua I.A. and Guobadia, D.A. (Eds) (2001). Law and Research Methodology, Lagos: NIALS.

3.7 ANSWER TO SELF- ASSESSMENT EXERCISE

UNIT 4 CONSTRAINTS IN PLANNING RESEARCH

CONTENTS

4.1 INTRODUCTION

In this unit, we are concerned with the challenges and problems confronting researchers in articulating a research plan. A subsequent module will look at constraints in terms of the execution and presentation of research studies. Endeavor in the course of your study to identify challenges that you have had to face in the course of your studies.

4.2 LEARNING OUTCOMES

By the end of this unit you should be able to:

- Understand the various infrastructural and technical problems encountered in research work; and
- Devise remedial or alternative measures that reduce their negative impact on your research.

4.3 CONSTRAINTS IN PLANNING RESEARCH

4.3.1 Constraints in Planning Research

1. The need to plan research is often glossed over by researchers. Matters are not helped by the frustration encountered in consulting materials such as books, law reports and legislation required for an exhaustive literature review. Inexhaustive review due to limited access to materials is the bane of the researcher in Nigeria.

Materials such as subsidiary legislation, recent cases and statutes, are not readily available. Often the researcher has to make do with secondary sources such as news reports or articles. Search engines like “Google” and “Alta vista” on the internet are good resources for a preliminary review – when skillfully used. Not many researchers, however, possess the skills required to obtain relevant and credible materials from the internet.

2. There are grave constraints too in the area of resources especially funds. Most research stands to benefit from a pre-test. Such tests reveal practical shortcomings in the research plan which can be corrected before the real survey. However, sometimes time and financial constraints make it impossible to conduct such pre surveys.

3. The third type of constraint is manpower. Skill is not only required in designing survey questionnaires but also in analyzing results of the research. Increasing recourse to multi-disciplinary research has shown some deficiencies in legal studies, namely the lack of attention paid to statistical skills required in the analysis of data and research studies

SELF ASSESSMENT EXERCISE 1

You have been asked to conduct research on the whether the death penalty should be retained as punishment for murder and armed robbery in Nigeria. Outline a research plan for this project, indicating what sources you consider primary and secondary. Attempt also a literature review of the research theme

4.4 SUMMARY

The failure to exhaustively plan and conceptualize the research project remains the major constraint faced by legal researchers in Nigeria. Very often inadequate resources are cited as a major constraint; however, in reality the absence of a good plan will frustrate the quest for research funds.

4.5 REFERENCES/FURTHER READINGS/ WEB SOURCES

Gasioukwu, M.O (1993). Legal Research and Methodology: The A – Z of Writing Thesis and Dissertation in a Nutshell, Jos: Fab Educational Books

Ayua I.A. and Guobadia, D.A. (Eds) (2001). Law and Research Methodology, Lagos: NIALS.

4.6 ANSWER TO SELF-ASSESSMENT EXERCISE

MODULE 2 RESEARCH METHODS

UNIT 1 METHODOLOGY IN RESEARCH

CONTENTS

1.1 INTRODUCTION

In this unit we will consider the techniques and ways of carrying out the different kinds of research. It would have been apparent from Module one that the objectives and types of research will significantly influence methods used. In carrying out research under the two main types, namely the doctrinaire and empirical, researchers have come to attach certain peculiar methods to each type.

1.2 LEARNING OUTCOMES

By the end of this unit, you should be able to:

- Identify the various methods used in research generally.

The ability to organize research around a chosen theme depends largely on an appreciation of research methodology. Not all research can be conducted in the same way, much less is it possible for the researcher that has adopted wrong methodology to obtain accurate results. Our goal in this unit is to expose the reader to relevant considerations in determining methodology.

1.3 METHODOLOGY IN RESEARCH

1.3.1 Methodology in Research

Methodology means the procedure or ways and means by which research is carried out. Although there are no set ways, the nature of the enquiry and the subject discipline under which it is carried out, invariably determines the methods that will be used to conduct the research. For example research undertaken under the physical sciences is essentially carried out through series of experiments and tests, while the social scientist conducts research by engaging human beings as respondents.

Methodology is important to the accuracy and value of the research results. Many so called inventions lose their value on account of failure on the researcher's part to demonstrate scientific and verifiable methodology. We have observed that methodology in research is largely influenced by the discipline of study. Four broad categories of methodology can be identified, they are:

(a) Case study – this is an observation of a real life situation or incident with a view to ascertaining behavioral or other changes over a stated period (when the situation is simulated it becomes an experiment);

(b) Documentary research – this is concerned with the review and analysis of documentary material. This is the familiar methodology employed in legal research ;

(c) Experimental methodology - tests the research hypothesis by simulating or replicating a situation that produces observable results;

(d) Survey or enumeration – favored by the social scientist, it collates perceptions and opinions on themes identified for the purpose of the research.

1.3.2 Legal Research Methods

In section 3.1 above, we learnt about the four broad types of methodology in research:

(a) Case study

(b) Documentary investigation

(c) Experimental, and

(d) Survey

This section is concerned with methods employed by the legal researcher.

The legal practitioner is essentially concerned with three major activities namely:

1. provide advice to his client based on facts presented and the application of the law to such facts ;

2. stipulate rules or laws for regulating human conduct in society and providing penalties for breach in appropriate cases

3. litigate or advance arguments in support or against the bases or principles on which the existence or otherwise of a right power, privilege, defence or duty is alleged to exist.

In all these activities familiarity with the law is key. Hence the advocate must be familiar with the relevant case and statute law which supports his case before a court of law while legislative counsel must be familiar with the subject matter of the law he is called upon to draft.

Legal research is practical in nature, that is, it engages in a re-discovery of recorded information which is in the public domain. Legal research methodology therefore typically involves the second type i.e. documentary investigation. In conducting research the lawyer must carefully distinguish between primary sources and secondary sources.

A primary source refers to the body of laws itself i.e. the Constitution, Acts, Laws, and case reports. Secondary sources on the other hand analyse, comment on or discuss the law or the primary sources. They comprise articles, books, digests and legal dictionaries or encyclopedias. The significance of the distinction lies in the fact that primary sources are more authoritative than secondary sources. In a subsequent module we shall learn about using resources in the law library to find these materials.

1.4 SUMMARY

Research methodology should be clearly defined and the relationship between the methods chosen and the key derivatives also revealed.

1.5 REFERENCES/FURTHER READINGS/ WEB SOURCES

Gasioukwu, M.O (1993). Legal Research and Methodology: The A – Z of Writing Thesis and Dissertation in a Nutshell, Jos: Fab Educational Books

Ayua I.A. and Guobadia, D.A. (Eds) (2001). Law and Research Methodology, Lagos: NIALS.

1.6 ANSWER TO SELF- ASSESSMENT EXERCISE

UNIT 2 TOOLS OF RESEARCH

CONTENTS

2.1 INTRODUCTION

In this unit we will learn about the tools of legal research. It is usually said that the tools of a lawyer are his books. Indeed every profession is practiced with the aid of certain tools. The legal researcher has a number of tools at his disposal. The scope and objective of the research, however, determines whether and if so to what extent any particular tool is used.

2.2 LEARNING OUTCOMES

By the end of this unit you should be able to:

- Identify the wide range of tools available to the legal researcher; and
- Highlight in the course of this, the advantages or disadvantages of each.

2.3 TOOLS OF RESEARCH

The legal researcher is equipped with a range of tools and resources which can be classified into primary and secondary tools.

2.3.1 Primary Resources

Primary resources comprise Legislation including the revised editions as well as the annual volumes. Legislation can be further divided into primary and subsidiary legislation.

A primary legislation is the Act passed by the National Assembly or

Law passed by a House of Assembly of a State. Subsidiary or Delegated legislation are regulations, rules and circulars issued by an executive administrative or a judicial body with the consent of the legislature. Another type of primary tool is case law. This is the body of judicial decisions on a

principle which operates as binding precedent for any other court concerned with the application of the principle.

The major types of primary resources are:

(a) Acts and Laws: Acts of the National Assembly enacted before 2005 can be found in the revised edition of the Laws of the Federation 2004. Subsequent volumes are published yearly or on a piecemeal basis in the Federal Gazette.

(b) Miscellaneous Government Publications: these can be found in the gazette which is regarded as authoritative

(c) Delegated Legislation: Most versions of delegated legislation made under pre-2005 Acts can be found in the 2004 revised Laws.

(d) Law Reports: these are records of proceedings of cases which also abstract for ease of research the main reasons for the judgment of the court (ratio decidendi), Law reports are published locally and internationally. The law reports that contain Nigerian cases are the most authoritative, since foreign cases are only of persuasive authority to Nigerian courts. Popular examples include:

i. Nigerian weekly Law Reports (cited NWLR) ii. Supreme Court Reports (cited SC) iii. All Nigeria Law Reports (cited ALL NLR) iv. Nigerian Supreme Court Cases (cited NSCC)

2.3.2 Secondary Resources

Secondary sources consist of opinions and commentaries on the primary sources of law as distilled from text books, articles, comments and digests. Secondary sources such as a treatise by a notable jurist may assume primacy in a particular field such that it can be cited in court e.g. Aguda: “Law of Evidence”, however, it remains a secondary source of the law.

Major examples of secondary legal materials are:

(a) Text books and monographs: these constitute the bulk of literary collections and they may be categorized in terms of target such as Students Textbook, Practice book, Lecturers book etc.

(b) Digests: these are summaries of cases and sometimes statutes. They are published by local and overseas publishers.

(c) Law Journals and Periodicals. Journals and periodicals present the most current source of law on a subject because unlike books they are published more frequently.

(d) Reference materials: these are standard non-authoritative legal materials that assist the researcher in finding the law. They are pointers to other sources and consist of :

i. Dictionaries ii. Precedent books iii. Encyclopedias iv. Year Books and Annual Surveys

v. Bibliographic references and Index vi. Handbooks and Manuals vii. Directories and Guides

The researcher soon discovers that locating these tools can be quite problematic. Finding the law on any particular subject can be tackled through three main approaches:

1. The descriptive approach: This is where the researcher describes the nature of the subject matter. For example where the question is whether the death of an accident victim will result into criminal liability, a researcher may start with the description - "fatal accidents" or "death by dangerous driving". This approach can lead to results that are wide off the mark.

2. The author's identity if known invariably leads to quicker and more accurate results. Likewise when dealing with legislation, the identity of the enacting chambers i.e. whether State or National Assembly can be of great assistance. Likewise where the researcher is looking for case law, knowledge of the court that rendered the judgment will expedite the research.

3. The topic or title. This is where the researcher knows the title of the book, case or Statute that relates to his study.

2.3.3 Empirical Legal Research Tools

We cannot end this part without mentioning the tools employed by a researcher in the course of an empirical or non-doctrinaire study. You will recall in previous sections that unlike the doctrinaire type of research, empirical legal research seeks to establish a particular relationship between law and society. The tools employed for this kind of research can also be divided into two, i.e.

1. Primary materials: Comprising responses and results generated from interviews, discussions and administration of questionnaires;

2. Secondary materials: These comprise Statutes, case law, books and monographs.

2.4 SUMMARY

This unit focused on the tools employed in doctrinal and empirical legal research. The researcher's choice of any of these tools depends first on the nature of the research and resources. Once this choice is made the task of locating the materials commences with the aid of various search criteria.

2.5 REFERENCES/FURTHER READINGS/ WEB SOURCES

Gasioukwu, M.O (1993). Legal Research and Methodology: The A – Z of Writing Thesis and Dissertation in a Nutshell, Jos: Fab Educational Books.

Ayua I.A. and Guobadia, D.A. (Eds) (2001). Law and Research Methodology, Lagos: NIALS.

2.6 ANSWER TO SELF- ASSESSMENT EXERCISE

UNIT 3 EVALUATION AND ANALYSIS

CONTENTS

3.1 INTRODUCTION

In this unit, we will deepen our knowledge about the tools of legal research by learning where and how to locate them. Anyone engaged in legal research must be conversant with the law library and also master the ability to subject the results of his research to proper analysis.

3.2 LEARNING OUTCOMES

By the end of this unit you should be able to:

- Locate the wide range of tools available to the legal researcher; and
- Highlight the importance of analysis and revision of the initial research hypothesis.

3.3 EVALUATION AND ANALYSIS

3.3.1 Evaluation and Analysis

Our discussion under this head will start with how research is conducted in a law library. The second part will examine the steps towards analyzing the results of research.

3.3.2 The Law Library

The Law library can be likened to the lawyer's laboratory. This is where the researcher can locate resources that either support his premise or reject it. The Law Library houses a variety of primary and secondary resources. These resources can be located by three broad methods –

(a) Using the catalogue (manual or electronic). The index card or catalogue records the title, author, subject matter and key details of publications. These days electronic catalogues can immediately let the user know whether the material in question has been borrowed or otherwise not available in the Library where the search is being conducted.

(b) Browsing the shelves: This is helpful where the researcher can identify the subject matter but desires to subjectively evaluate the available materials in order to narrow his search. Wild cat searches are greatly assisted by the use of a bibliographic list.

(c) Readers Services: Modern libraries have readers' services officers (librarians) who offer a range of assistance to users of the library such as locating a particular material, reserving one or generating a bibliography.

3.3.3 Evaluation

After reading or consulting the law and other relevant materials, the next significant step is analysis with a view to establishing whether the findings support or contradict the research hypothesis. It is not unusual that material unearthed during the course of a research contradicts the research hypothesis. Often the evaluation may also lead to the discard of other materials as irrelevant to the purpose of the research or indeed may inform a revision or modification to the research hypothesis. This latter action is standard in the course of doctrinal research. As evaluation may reveal that the initial hypothesis or case was based on outdated law which has either been repealed (for statutes) or overruled in the case of case law and may also have to update.

SELF ASSESSMENT EXERCISE 1

Visit a law library near you and record the following observations:

(a) Did you use an electronic or manual catalogue?

(b) How were books arranged on the shelves; state whether alphabetically or according to subject classification? (c) Whether periodicals were arranged separately.

SELF ASSESSMENT EXERCISE 2

1. What would you do as a researcher if in the course of evaluating a research theme you discover that your hypothesis has been over-flogged or wrong?

2. Where else can information on your research theme be obtained apart from a library?

3.4 SUMMARY

The law library is the primary laboratory of legal research. Most lawyers have well developed library that are, however, focused on their areas of specialization. Using a law library with multiple collections is greatly facilitated by the catalogue or library assistants. After reading or consulting the law and other relevant materials, the next significant step is analysis with a view to establishing whether the findings support or contradict the research hypothesis. This is the process of evaluation or updating the research hypothesis.

3.5 REFERENCES/FURTHER READINGS/ WEB SOURCES

Gasioukwu, M.O (1993). Legal Research and Methodology: The A – Z of Writing Thesis and Dissertation in a Nutshell, Jos: Fab Educational Books

Ayua I.A. and Guobadia, D.A. (Eds) (2001). Law and Research Methodology, Lagos: NIALS.

3.6 ANSWER TO SELF ASSESSMENT EXERCISE

UNIT 4 THE RESEARCH REPORT

CONTENTS

4.1 INTRODUCTION

In this unit we examine the means by which the research effort is brought to the knowledge of a third party or the public at large. This is usually done by writing a report. The style and format of the research report should aim to present the research findings in an objective and lucid manner. Documentation is the formal acknowledgment and identification of data opinions and various other materials that have contributed to the overall quality of the research. Research is documented for the following reasons:

(a) Dissemination to wider audience

(b) An incidental final stage of research

(c) Scientific record for posterity

(d) Requirements of a supervising institution or sponsor

It should be noted, however, that not all research is geared towards public dissemination.

4.2 LEARNING OBJECTIVES

By the end of this unit you should be able to:

- Explain the process of recording and presenting the research

findings to a third party;

- Understand style and appreciate also the need to convey ideas in objective and lucid manner.

The reader's writing skills will be greatly enhanced by this unit.

4.3 THE RESEARCH REPORT

4.3.1 The Research Report

In 1.0 above, we outlined four principal reasons why a research report or documentation is necessary. Research needs to be documented primarily to demonstrate the authenticity of the research. This is particularly true of research in the physical sciences and also empirical research. It is also quite significant in legal research. Indeed while legal research may not necessarily lead to a comprehensive report, the opinion or the brief that is based on the research, must be also observe similar standards of objectivity and clarity.

Components of the Report

The report after a legal research is usually narrative or descriptive. There is no hard and fast rule about what should go into a report. The important elements are the description of the methodology, the findings and acknowledgment of sources (bibliography) including recommendations. Other reports have an introductory material, background or abstracts or summaries.

In reporting on the findings the following points should be noted:

(a) All sources of information must be acknowledged. The use of intellectual work done by another person in a manner that represents that it is the original work of the author is called plagiarism.

(b) Well known information need not be acknowledged. E.g. the national anthem or the identity of Ministers in the federal Cabinet.

(c) Where quotations are employed, the author of such statements must be acknowledged.

4.3.2 Style

Modern legal writing style favours the use of clear, short and direct sentences. There is a growing awareness of the advantages of simpler and more direct English in the course of written communication. Apart from the logical arrangement of the report, the researcher should ensure that the reader of the report can read through it with minimal effort.

Some of the suggestions that can improve the style of writing are as follows:

(a) write short and simple sentences

(b) use paragraphs

(c) consider the use of tables, graphs or diagrams

(d) avoid verbosity or high sounding words

(e) avoid nominalization: this happens where the verb is used as a noun. E.g. instead of saying " the policeman may arrest the suspect" you say " the policeman can effect the arrest of the suspect"

4.3.3 Referencing

There are two main types of referencing - notes and bibliography. Notes are further divided into footnotes or endnotes. Footnotes appear at the bottom of the page where the referencing occurs while endnotes are compiled together at the end of each chapter or the whole report. They should not be combined in the report. Some editorial or publishers' guidelines expressly stipulate that researchers or authors should use a particular type.

Footnotes and Endnotes

These forms of referencing are used to:

(a) provide information on the sources of data, quotations or ideas from other sources used in the report,

(b) make cross- references to other portions of the report,

(c) amplify or illustrate concepts discussed in the report or paper,

(d) assist the reader identify when and where a referenced information is used.

Notes are created using the superscript system or the number system. This latter is used for reference works and annotations of legislative material. In this case, all notes or cited materials are assigned numbers which is retained throughout the text or report. The number is usually put in square brackets and is superscripted. [2]

Footnotes

Footnotes have a major advantage over endnotes in that they are easier to locate and more convenient from the readers viewpoint. Hitherto, however, authors encountered serious formatting and pagination problems with footnotes. The advent of modern word-processing machines like the computer has eradicated this problem. All computers can automatically generate and place numbers for footnotes.

Footnotes should:

(a) appear on the same page as the index numbers in the text

(b) be separated from the text by a line (this is automatically generated by most word processing programmes)

(c) in regard to each, start on a separate line

(d) single-spaced within a note and double-spaced between footnotes.

(e) include page references to assist the reader locate cited material.

Endnotes

Endnotes on the other hand have the advantage of easier space allocation without the typist having to grapple with the margin at the bottom of the page. Additionally they give the paper or report a better visual outlook as pages are not separated by lines and two sizes of lettering. On the other hand the endnote system is inconvenient for readers who have to constantly flip through pages or chapters in order to find citations or amplifications referenced in the text.

Endnotes should:

(a) be placed at the end of the report or a chapter with the word "Notes" written centrally on top of the page;

(b) be single-spaced within the note and double spaced between notes.

SELF ASSESSMENT EXERCISE 1

Visit a library and read an article in a Law Journal as well as a thesis submitted by a post graduate law student (e.g. LLM); compare the referencing styles used. Did you observe a preference for notes in both writings? Was it footnote or endnote referencing?

Bibliography

The bibliography is a comprehensive list of all literary works and documents consulted during the research including materials that were actually used (cited) and those not cited. The researcher should limit the bibliography to materials that were actually consulted and arranged in alphabetical order. If the report contains endnotes, appendices and an index, the bibliography should be placed after the endnotes and appendix but before the index.

Bibliography can be distinguished from notes in the following respects:

(a) bibliography unlike notes does not include specific page references

(b) unlike notes a particular work is cited only once regardless of the frequency of reference in the report

(c) alphabetical arrangement is followed for the bibliographic list while the order of usage governs for notes

(d) the documentation format differs from notes e.g.

Bibliography Format – Cats are nocturnal felines (Davis, 1980:

78-80)

Footnotes format – Cats are nocturnal felines

4.4 SUMMARY

Research reports represent a significant medium of conveying the results or information gleaned in a research work. It also demonstrates the thoroughness of the research and presents scientific evidence that the research is an original work. The researcher must, however, carefully structure the report to convey information logically and lucidly. The writing style should be simple and

direct. Referencing should also adequately acknowledge other works or ideas that have been consulted and used by the researcher. Whether any particular referencing technique is used is a question of individual choice, although legal writing leans predominantly towards referencing by notes as distinct from the rest of the social sciences where the bibliographic style predominates.

4.5 REFERENCES/FURTHER READINGS/WEB SOURCES

Gasioukwu, M.O (1993). Legal Research and Methodology: The A – Z of Writing Thesis and Dissertation in a Nutshell, Jos: Fab Educational Books

Ayua I.A. and Guobadia, D.A. (Eds) (2001). Law and Research Methodology, Lagos: NIALS.

4.6 ANSWER TO SELF-ASSESSMENT EXERCISE

UNIT 5 ETHICAL ISSUES IN LEGAL RESEARCH

CONTENTS

5.1 INTRODUCTION

The researcher often encounters in the course of research a number of challenges that may influence the handling of certain things in the study and also the reports which are unethical or objectionable. Despite the fact that there are no clearly definable offences or provisions against unethical research practices, the researcher who engages in it, gains notoriety and opprobrium from his colleagues while his work suffers a lack of credibility. In this unit, we will look at some guiding principles that can assist us in conducting and reporting research work.

5.2 LEARNING OUTCOMES

By the end of this unit you should be able to:

- Explain the ethical rules and principles of legal research;
- Explain why the process of conducting and recording research studies is subject to codes of ethics that cuts across professions and disciplines; and
- Familiarise yourself with ethics of legal research and writing.

5.3 ETHICAL ISSUES IN LEGAL RESEARCH

5.3.1 Ethical Issues

The fact that there are no legislative sanctions or written ethical codes does not mean that ethics has no role in legal research. Some sponsors of research work and some publishers have standard codes for researchers or authors and editors which are of ethical coloration. For example authors are usually asked to cite references using a certain format which discloses the year of publication

and page or pages where the consulted material can be found. This is done in order to encourage authors to refrain from citing materials that they have not consulted.

The topic is discussed under two main heads:

1. Ethics and research study

2. Ethics and legal writing

5.3.2 Ethical Aspects of Research Studies

Unlike empirical research, doctrinal legal research suffers from a paucity of ethical codes. In the former, social scientists are guided by several rules out of which the following are key, namely:

(a) A researcher should not misuse data collated in the study particularly the personal details of respondents.

(b) The researcher must make a full disclosure of the aims and objectives of the research to respondents or objects of the research.

(c) The researcher must be sensitive to the cultural or religious habits or norms of the area of study. For example where a survey is carried out in a predominantly Islamic community the privacy of women in Purdah should be safeguarded.

(d) The researcher should not manipulate results of the research in order to favour the research hypothesis.

However, even in doctrinal research there are some basic rules that have ethical basis and can significantly enhance the overall quality of the research. Some of these are that the researcher:

(a) Should strive at obtaining original or firsthand sources of information. All references cited by the researcher must be those that have been actually consulted and not a paraphrased version from a secondary literary work.

(b) Recognize the limitations and validity of his research hypothesis after researching available literature. Invariably after evaluating or reviewing the literature on a subject the researcher may come across contradictory data. For example a lawyer researching a case may come across a decision of the Supreme Court which negates his hypothesis; it would be unethical to suppress this decision or pretend it does not exist in the brief that results from the research. What the lawyer should do in such circumstances is to review his initial position in the light of the decision and look for other arguments not contradicted by it.

5.3.3 Ethical Aspects of Legal Writing

The researcher’s code of ethics comes into play also in the course of writing. Indeed this is the aspect that is emphasized more by editors and publishers.

Generally the applicable principles can be summarized thus:

(a) The researcher should acknowledge the sources of his information. Where concepts originated by another person have been adopted or used in the research work they must be properly referenced and not presented as the ideas of the researcher. The theft of intellectual ideas is called plagiarism.

(b) Where a researcher has published an article or book, the intellectual property rights e.g. copyright belongs to the publisher. Therefore he is not at liberty to submit the same work to another publisher or reproduce the work in some other format e.g. in compact disc without the permission of the publisher. By the same token it is ethically wrong to submit material to more than one publisher simultaneously or to slant publish two or more article that are materially the same but with different topics.

(c) In dealing or criticizing other people's views, the researcher should endeavour to be objective and fair. He should not distort the arguments of the subject of criticism neither should he try to re-characterise the position or arguments of the other author in order to create a non-existent premise for debate.

5.4 SUMMARY

The question of ethics in legal research touches on the evaluation of data as well as the presentation or writing of the report. The primary ethical values are modesty, honesty and objectivity. A researcher who does not observe these golden principles runs the risk of losing respect and dignity among his professional colleagues and indeed publishers and other sponsors of research.

5.5 REFERENCES/ FURTHER READINGS/WEB SOURCES

Gasioukwu, M.O (1993). Legal Research and Methodology: The A – Z of Writing Thesis and Dissertation in a Nutshell, Jos: Fab Educational Books

Ayua I.A. and Guobadia, D.A. (Eds) (2001). Law and Research Methodology, Lagos: NIALS.

5.6 ANSWER TO SELF- ASSESSMENT EXERCISE

MODULE 3 RESEARCHING LEGISLATIVE PROPOSALS

UNIT 1 SOURCES OF LEGISLATION

CONTENTS

1.1 INTRODUCTION

In this unit, the reader learns about where legislation is derived. Researching legislative proposals and legislation is greatly enhanced by knowledge of the various sources of legislation. This unit complements the reader's appreciation of the law making process and highlights the role that research plays in that process.

1.2 LEARNING OUTCOMES

By the end of this unit you should be able to:

- Recognize in the course of your research, the dynamism of legal transformation of ideas from proposals or research findings to legislation;
- Assume the role of a catalyst in the law making process by being more sensitive to the impact of research on the legal framework.

1.3 SOURCES OF LEGISLATION

1.3.1 Sources of Legislation

Legislation is a body or generalized rules for the regulation of human conduct in society. The primary responsibility for making legislation rests on the legislature i.e. the National Assembly at the federal level and the states Houses of Assembly. This does not, however, mean that the Executive or indeed the Judiciary plays no role in the initiation of legislation. In many Presidential Systems of Government e.g. the United States of America, the Executive initiates the most laws and Nigeria is not an exception in this regard. Proposals for legislation may originate from any of the following sources –

(A) The Executive:

(i) Proposals may be in respect of the socio-political reform programme of the government. The process of development in many countries is inextricably tied to legislation. Some recent examples in the case of Nigeria are the National Health Insurance Scheme and the Contributory Pensions Scheme introduced in the last four years.

(ii) The establishment of a new body usually carved out of an existing Ministry or Department also requires legislation which specifies the functions of that body and its powers.

(iii) Annual budgetary estimates are required to be tabled before the legislature to enable the Appropriation legislation to be passed.

(iv) Response to sudden incidents of grave national significance. One example that can be cited here is the enactment of the Harmful Wastes Special Criminal Provisions etc Decree (No.42 of 1988), in reaction to the discovery of a toxic waste dumpsite on Nigerian territory.

(B) Judicial Developments: A decision rendered by the court of law particularly the Supreme Court may expose a gap or defect in the law that can be cured by legislation. A good example of this is the Supreme Court decision in the case of BRONIK MOTORS LTD. VS WEMA BANK PLC (1983) 1 SC 296 which prompted the enactment of the Federal High Court (Amendment) Decree (No.6 of 1991)

(C) Reports of Law Reform Commission: the Nigerian Law

Reform Commission is charged under the Nigerian Law Reform Commission Act Cap N118 LFN 2004 with the responsibility of examining any aspect of Nigerian law with the aim of bringing it up to date by introducing legislative reforms and best practices. The current Companies and Allied matters Act 1990 for example went through a rigorous process of revision and discussion before it was finally enacted into law.

(D) Private Interest Groups: may also sponsor or request that legislation should be passed in order to safeguard their professional or other interests. Many professional bodies require statutory backing in order to exercise necessary regulatory powers over members of the profession.

(E) Implementation of International Agreements and

Treaties: By virtue of section 12(1) of the 1999 Constitution, no treaty entered into by Nigeria shall have the force of law except it is enacted into law by the National Assembly. A good example of such legislation is the Consular Convention Act (Cap C24 LFN 2004)

SELF ASSESSMENT EXERCISE 1

(a) Enumerate the primary sources of legislation.

(b) Can you recall one law that was passed with the active participation of a non governmental organization?

1.4 SUMMARY

The initiation of legislation can be attributed to many actors and factors.

Although the legislative arm of government is under the 1999 Constitution charged with law making powers the executive and judicial arms of government can and do initiate legislation. The proposals emanating from these various sources need to be carefully researched and evaluated before the legislative drafter crafts them into Bills for the discussion of the legislators.

1.5 REFERENCES/FURTHER READINGS/ WEB SOURCES

Soetan, S: Essentials of Legal Drafting

1.6 ANSWER TO SELF- ASSESSMENT EXERCISE

UNIT 2 OBJECTIVES OF RESEARCHING LEGISLATION

CONTENTS

2.1 INTRODUCTION

In the previous modules we learnt about the reasons for undertaking research in general terms. Where legislation is concerned, however, many reasons may inform the research inquiry. Is it to amend or repeal existing law? Or the very question whether any law is required on the subject matter, requires some form of inquiry. The legislative power is not to be exercised lightly but responsibly and with adequate knowledge of material factors.

The legislative process consumes so much in terms of time and money that the consideration of a proposal that has not been well researched and therefore improperly articulated can lead to costly mistakes and a waste of resources. In this unit, therefore our major concern is to highlight why the research and evaluation of legislative proposals is required before these can be tabled before the legislature for debate.

2.2 LEARNING OBJECTIVES

By the end of this unit you should be able to:

- Familiarize yourself with the significance of researching and analyzing legislative proposals.
- Appreciate the complementary roles of the legislator, legislative counsel and legal analyst in the process of law making.

2.3 OBJECTIVES OF RESEARCHING LEGISLATION

2.3.1 Why Research Legislation?

This is not a question that one can easily find an answer to. On the one hand is the belief that law making in itself is a law giving function that produces materials or objects of research. This thinking maskS the fact that law making can also benefit from research. How is this so? The enactment of legislation does not exist in vacuum. Although new laws are made to fill a gap in the law, the new law will always operate in the context of existing laws. Thus, research is required before making this new law in order to:

(a) establish a basis for new legislation; researching the legal system; efficacy of existing system(empirical study)

(b) Look for precedents / comparative models

(c) Establish consistency with other statutes in the legal system e.g the

Interpretation Act/ Constitution

These reasons will now be examined in detail.

2.3.2 Researching The Legal System

Whenever proposals for a new law is made, it is necessary to first answer the question whether the existing legal framework can adequately take care of the problem the new law seeks to address. “Is there a law on the subject?” If so, is the law adequate? In what ways can the law be strengthened? These are typical questions that should be posed in research of this nature. Very often there is a law i.e. legislation on a subject, but which needs to be strengthened by amendments usually in the area of enforcement powers and sanctions.

It must not be presumed, however, that the mere fact that there is an existing law on a subject contemplated by a legislative proposal necessarily puts paid to the proposal. The Nigerian Criminal Code for example contains many offences but the modern dimensions taken by some of these offences such as corruption, fraud, kidnapping e.t.c. may require specialized enforcement powers and penalties in separate legislation.

It must also be noted that sometimes the adequacy or otherwise of an existing law may require more than the doctrinal form of research and the researcher should endeavour to look for an empirical basis for answering such questions. Lawmaking on certain social –economic issues such as poverty, health, social insurance e.t.c. will benefit considerably when preceded by such empirical studies.

2.3.3 Comparative Studies Or Precedents

Where new legislation is contemplated it is often of great assistance to ascertain in countries with comparable legal systems e.g. countries that operate the common law, how similar legislation was drafted and if possible research its efficacy in that country.

Precedents while useful should not be used without regard to the peculiar local circumstances of the proposed legislation. This could be of major importance where for example the legislation could affect custom or traditional beliefs. (e.g. child welfare, marriage or land use and ownership).

However subject to the cautionary note expressed above, precedents are useful devices particularly when one has fully appreciated the scope and underlying principles of the proposed legislation. The precedent thus serves as comparative material in evaluating the adequacy or otherwise of the proposal.

2.3.4 Consistency With Other Enactments Within The Legal Framework

Legislation should not be enacted which conflicts materially with other legislation within the legal framework of a country. Although when this happens the latter legislation is deemed to supercede the earlier in terms of the inconsistency, this may have unintended consequences. More importantly where as in Nigeria a written Constitution exists, legislation must conform to the constitutional provisions lest it is rendered void on account of inconsistency with the Constitution. Section 1 of the 1990 Constitution provides that:

"This Constitution is supreme and shall have binding force…"

Clearly therefore legislation must conform with the Constitution in the following respect:

(a) Legislative authority. Legislation must be made in accordance with powers conferred by the constitution notably under the exclusive or concurrent legislative lists outlined in the schedule to the Constitution.

(b) Legislation must not oust the jurisdiction of the court or interfere directly with the discretion of the court.

(c) Legislation on certain matters e.g. audit of public bodies must comply with constitutional format and procedure (see section 85 of the Constitution)

(d) Legislation must respect rights guaranteed under Chapter IV of the Constitution and also consider the application of the directive principles of State Policy contained in Chapter II.

In all these instances where the legislation fails to conform with the constitution, the legislation will be rendered void and of no effect.

Apart from the Constitution, research to verify legislative consistency should generally extend to the provisions of the:

1. Interpretation Act

2. Acts Authentication Act

3. Any other Act that has some general relevance to the subject matter of the legislative proposal. For example where a legislative proposal relates to the establishment of an Authority to regulate Maritime traffic, all existing laws dealing with Shipping, Ports and Harbours and Admiralty should be researched.

2.4 SUMMARY

In researching proposed legislation, the primary goals are to ensure firstly that there is a necessity for the proposed law and in what form. Secondly, whether examples or precedents can be found showing how similar legislation was structured or enacted and to what extent such was effective. Lastly, research must ascertain consistency of the proposed law with the Constitution and other laws in the legal framework.

2.5 REFERENCE/ FURTHER READINGS/WEB SOURCES

Soetan, O: Essentials of Legal Drafting

2.6 ASSESSMENT TO SELF- ASSESSMENT EXERCISE

UNIT 3 CLASSIFICATION OF LEGISLATION

CONTENTS

3.1 INTRODUCTION

In the previous unit we learnt about the reasons for researching the legislative framework before going ahead with new legislation. In this unit, we are concerned with the broad categories of legislation and the types of proposals that come under each broad category. The identification of the category under which a particular legislative proposal falls into can determine the extent of authorization necessary as well as the procedure to be followed. It is therefore of great importance in the legislative process to be able to classify legislation.

3.2 LEARNING OUTCOMES

By the end of this unit you should be able to:

(i) Determine the legislative format that best suits a particular situation or challenge.

The purpose of this unit is to identify and discuss the various categories and forms of legislation and consequently enhance the reader's ability to determine the nature and procedure that legislative proposals will conform with in the legislative process. The unit also focuses on the functional categorization of statute while also highlighting peculiar limitations of individual types.

3.3 CLASSIFICATION OF LEGISLATION

3.3.1 Classification of Legislation

Legislation can be broadly divided into two:

(a) primary legislation and (b) secondary legislation

3.3.2 Primary Legislation

This is legislation made by the primary law making institutions. Under the Constitution these are the National Assembly for the Federation and the House of Assembly for the States. (See section 5 1999 Constitution).

Where primary legislation is made by the federal legislative body, it is called "Act" while at the state level the terminology is "Law". A Bill of the National Assembly must be passed by both Houses of the National Assembly that is the Senate and the House of Representative. It becomes an Act if subsequently assented to by the President. A Bill passed by a State House of Assembly becomes a Law if assented to by the Governor of the State. Primary legislation are of various types. The following types are based on the functions or purpose for which the legislation is made. Some examples are:

(a) Criminal or prohibitory statutes: these are legislation that create prohibitions and stipulate offences.

(b) Fiscal or revenue legislation: this refers to statutes geared towards raising revenue e.g. tax statutes.

(c) Appropriation legislation refers to budgetary provision by law.

(d) Regulatory Statute typically refers to legislation that sets up a regulatory scheme in relation to an industry or sphere of life.

(e) Amending or Repealing Statute.

(f) Validation Statute etc.

3.3.3 Secondary Legislation

This consists of legislation made by delegates of the primary legislative powers. They are laws made by bodies and persons other than the legislature and whose authority to make such laws arises from an express permission from the legislature. It is also called delegated or subsidiary legislation and its validity depends primarily on –

a. Conformity with the scope and substance of the reasons for delegation. A power to make regulations for the admission of students to the dormitory cannot be extended to regulations on student examinations.

b. Conformity with the procedure or form stipulated by the terms of delegation. Therefore where under the enabling provision (i.e. the statute authorizing the making of the legislation) notice of 5 days is required before a rule can be brought into effect, a 3-day notice or absence of notice nullifies the rule.

These two requirements under paragraphs (a) and (b) form the ultra-vires rule.

There are various types of secondary legislation; these are:

(a) Regulation: these are provisions designed to amplify or elaborate upon the statutory scheme.

(b) Rule: these are usually provisions that prescribe the internal procedure or the procedural aspects of some formal institution like a court or the Board of a statutory body.

(c) Bye-Law: these are provisions made by Local Government councils pursuant to the Constitution and the Law constituting such Councils in a State.

(d) Order: this is employed where some appointment is required to be made under the enabling statute. This is the usual way by which an official is designated for a particular purpose under a statute.

(e) Notice: a notice is the formal notification of action taken by a designated official under the enabling statute. Another instance is where the operative date of an enactment is postponed to "a date the Minister may by Notice published in the Gazette appoint".

3.4 SUMMARY

In researching proposed legislation, the researcher must bear in mind that legislative proposals may eventually result into primary or secondary legislation. The particular form the proposal will take depends largely on its objectives and the state of the existing legal framework.

3.5 REFERENCE/FURTHER READINGS/ WEB SOURCES

Soetan, O: Essentials of Legal Drafting

3.6 ANSWER TO SELF- ASSSESSSMENT EXERCISE

UNIT 4 TOOLS OF LEGISLATIVE RESEARCH

CONTENTS

4.1 INTRODUCTION

In this unit we examine the materials employed in the course of researching legislation. The reader will recall that in Unit 2 of Module two we discussed tools of legal research generally. The reader should ensure that this earlier discussion is thoroughly understood before reading this part of the course material. Research into legislation shares broad similarities with the doctrinal form of research. The tools used are a combination of primary and secondary tools subject to the caution that scant reliance should be placed on secondary tools in order to draw a conclusion of law. Whereas secondary sources are good pointers or locators of the law, it is very risky in legislative research to rely on secondary materials in determining the content or validity of proposed legislation.

4.2 LEARNING OUTCOMES

By the end of this unit you should be able to:

- Identify the main tools of legislative research.

Particular emphasis is placed on those tools that deal exclusively with legislative material. Although of limited use in drawing conclusions on law, it will be seen that some secondary materials have peculiar advantage in the analysis and identification of statutes or subsidiary legislation.

4.3 TOOLS OF LEGISLATIVE RESEARCH

4.3.1 Tools of Legislative Research

4.3.1.1 Primary Tools

These are the statutes themselves or the subsidiary instruments. The publication of statutes is governed by the Acts Authentication Act Cap A2 LFN 2004. An Act of the National Assembly shall not be printed by the Government Printer or gazette unless the seal of the Clerk of the National Assembly is affixed to the copy of the Act as the authentic version of the Act passed and assented to by the President. (Similar provisions govern the Laws passed by Houses of Assembly).

Acts or Laws are published in the Gazette and assigned numbers by the Government Printer. Numbers are assigned for Acts published in each year i.e. January to February. Act published the following year are assigned a new set of numbers e.t.c. Published statutes can be found in –

(a) Annual Volumes of the Statutes e.g. Laws of the Federation or State (2007) which contains Acts or Laws passed in the year 2007. Sometimes the volume may also contain subsidiary Legislation made in the same year.

(b) Revised volumes of the laws of the Federation or State. The last revision exercise for federal legislation was conducted in 2004. A revision consolidates amending statutes and integrates them into the body of the principal statute thus removing the need to refer to more than one text when reading the statute. A revision also removes from the statute books obsolete, repealed or otiose legislation. The 2004 Revised edition of the Laws of the Federation follows on the earlier one concluded in 1990. Although a revision is carried out by a person or body other than the legislature, the revision is carried out with the authority of Parliament and the revised laws adopted by the legislature. This confers upon them the primary character of legislation.

4.3.1.2 Secondary Tools

There are a vast number of secondary tools that can be used to locate legislation. These law finders as they are called vary greatly in scope and nature. Some of them are considered here:

a. Annotated or Reference works such as restatements or encyclopedia. The presentation of legislation can be greatly enriched by the addition of commentaries, cross references including case analyses relevant to particular sections. Examples of a published Annotations

is the United States Code Annotated; Halsbury's Statutes of England and in Nigeria Sasegbons Laws of Nigeria.

b. Statute index or bibliography. Just as the name indicates the statute index outlines either chronologically or alphabetically a list of statutes including where appropriate subsidiary legislation, indicating the history of the instrument and any developments by way of amendment, repeal or substitution. No comments are added. See Oduba F.N.: "Index to Federal Statutes in Force Lagos, (1984).

c. Loose leaf services. Modern forms of publishing statutes adopt the loose leaf format which allows the reader to substitute updated pages of the legislation in the form of amendments with the old text of the law. Loose leaf services are particularly useful in specialized areas such as taxation or banking. Its major advantage is that it offers a comprehensive collection of primary and secondary legislative materials on a subject matter. It is a service offered by Butterworths, Lexis Nexis and other Statute publishers.

d. Statute digests. These are concise summaries of the history and subject matter of a statute. The whole statute is not reproduced and comparative material for example on related statutes or case law is included but no explanatory text.

e. Reports and handbooks. Occasionally information about the enabling law of an organization is gleaned from the handbook or in-house journal of the organization. This is commonly so in relation to subsidiary legislation and other forms of regulations or Orders made by the Governing body of the organization.

4.4 SUMMARY

The tools of legislative research can be divided into primary and secondary tools. The primary sources are more authoritative in research. However, some secondary sources provide the basis for comparative and substantive analyses in the course of the research.

4.5 REFERENCES/FURTHER READINGS/ WEB SOURCES

Soetan O: Essentials of Legal Drafting

4.6 ANSWER TO SELF- ASSESSMENT EXERCISE

UNIT 5 CONSTRAINTS

CONTENTS

5.1 INTRODUCTION

In this unit, we shall examine some of the major challenges of legal research with particular reference to the research of legislation. Some of the methodology and tools discussed in the preceding units are based on the assumption of an ideal environment. In the real world, the researcher may have to contend with obstacles which significantly affect methodology or indeed the range of research tools available to him. This is not peculiar to Nigeria or the developing economies since an ideal situation rarely exists even in developed economies. This unit is geared towards sensitizing the reader to some of the problems researchers face and how solutions are devised to overcome them.

5.2 LEARNING OUTCOMES

By the end of this unit you should be able to:

• Explain the limitations that confront researchers in Nigeria in relation to legislative issues.

By discussing these challenges and highlighting solutions to them, we also try to equip the readers with the skills that are needed to overcome these challenges where appropriate. Some of the problems stem also from avoidable mistakes of researchers. Where such is identified, our objective is to make the reader better researchers in documenting studies and publishing them for archival purposes.

5.3 CONSTRAINTS

5.3.1 Constraints in Research

Many of the challenges discussed here are not peculiar to research on legislative issues. The bane of legal research has always been the difficulty of accessing primary and secondary materials. This is the fundamental challenge and can be examined under the following heads:

(a) Inadequate law libraries: primary and secondary materials for legal research are best located in a library. Law libraries have been described as the laboratory of the lawyer; however, the task of equipping a law library with books, legislation and periodicals is hugely expensive. Apart from the money required it is also problematic keeping current with subscription to foreign or comparative materials as a result of complications of foreign exchange transactions. The skills required to manage such libraries are also in short supply. Library management is a specialized and highly demanding task. A good manager can adequately gauge the requirements of the library clientele and can tailor the modest collection of the library to their needs. It is important that law libraries should be manned by competent law librarians.

(b) Vandalisation: one growing trend of grave implications is the way some users of the library abuse the privilege of access and steal or destroy books or the collections in the library. Some of these vandals often target highly priced sets of practice books or encyclopedia knowing that these would be easily sold.

(c) Poor documentation or publication habits: the failure to gazette subsidiary legislation and a gradual decline in the production of research studies also contribute to the problems of access. The problem of publicizing laws, particularly subsidiary legislation has been described as a carry-over from the military where Decrees and Edicts are publicized through radio and TV.

(d) Resource constraints: lack of adequate human and material resources hamper researchers in the quest for desired materials. Many subscription opportunities are priced out of reach of researchers in Africa. Some publishers have special access options for developing countries but the infrastructure required for such options i.e. internet often make such options illusory.

Other problems are traceable to the nature of legal scholarship which is biased towards the doctrinal form of research. Until recently, undergraduate study in law was bereft of skills designed to equip lawyers undertake empirical studies and social science analyses. The consequence of this is that much of legal research and scholarship still concentrates on case law and statutory analyses, to the detriment of operation of the law in society. It is only recently that legal researchers are appreciating the importance of collaborating with the social scientist in inter – disciplinary research studies into the effect of law and theories of law in society.

5.4 SUMMARY

The major challenge of legal research in Nigeria is the lack of access tools or legal materials. While few law libraries have strived to fill this gap, their efforts have been thwarted by the paucity of resources they themselves face. Generally the researcher encounters unavailability of basic primary and secondary materials. Vandalisation of these materials is also rife.

5.5 REFERENCE/FURTHER READINGS/ WEB SOURCES

Soetan, O.: Essentials of Legal Drafting

5.6 ANSWER TO SELF- ASSESSMENT EXERCISE