

Prepared and Submitted by: Dr. Sope Williams-Elegbe and Edefe Ojomo

Institutional Affiliation(s): *Stellenbosch University, South Africa, and University of Lagos, Nigeria*

Date of Submission: February 2013

INTRODUCTION TO LEGAL RESEARCH

Basic Conceptual Issues

According to the Oxford Advanced Learner's Dictionary, research means 'a careful study of a subject, especially to find or discover new facts about it'.

Research therefore involves gathering information *for a purpose*, and it is the purpose that usually determines the type of research undertaken and how it is conducted.

Legal research would, in a similar vein, involve the collection of legal materials for the purpose of discovering new facts that would contribute to the body of knowledge in a legal field or subject. Legal research is defined by legal studies since it is the materials that are used in legal studies and the topics that are taught and learnt that determine legal research. In a similar light, legal studies are also defined by legal research as the discoveries of legal research shape legal studies.

Research is usually a daunting task, and the style adopted may differ according to the educational system, the supervisor, or even the researcher, as, like many other tasks, developing a personal style is the most important factor to enjoying the process and achieving desired results.

When we undertake research, we usually seek to find an answer, a solution, a result. This means that we begin from a point of not knowing or of wanting to know more, and we usually have what we call a research question. The **research question** raises the interrogation that the research seeks to pursue. A research question is not always very straightforward since it might raise more than one point for consideration or interrogation, but it is usually a very basic step from which to begin a research project.

The research question as the foundation of the study, defines the research paradigm that forms the assumption of the study, identifies the literature from which the research emerges and to which it contributes, defines the methodology utilized and suggests techniques to be employed throughout the research.

Frances K. Stage & Karen Manning, *Research in the College Context: Approaches and Methods* (2003 Brunner-Routledge, New York)8

An example of a simple research question may be:

Do court clerks improve the judicial process?

OR

How do court clerks improve the judicial criminal process?

The first question seeks to discover whether a particular situation is true or false, that is, whether court clerks improve the judicial process. This might involve considerations about what court clerks do, what the judicial process is, and how court clerks contribute to this process – or not. This question seeks to determine whether a particular postulation is true, and would involve research into what happens and its effects. The second question, on the other hand, assumes that court clerks improve the court process, and seeks to determine how. Hence, it involves an interrogation into the processes by which

the process is improved. In addition, the second question further limits the focus to the criminal process, which means it concentrates on a particular aspect of the judicial process, as opposed to the entire judicial process.

Each question described above is broad enough to cover even more questions which will determine the basis of the method adopted and the general style of the work. These breakdowns are called sub-questions, as they flow from and form part of the general research question.¹ So, while the research question is a broad foundational interrogation that forms the basis of the research, 'sub-questions' break down the research further to the point where the finer details and contents of the project are defined and nuanced.

Examples of sub-questions for the first research question example above would include

What does the court clerk do?

How does the judicial process operate?

What is the role of the court clerk in the judicial process?

How does the work of the court clerk impact the judicial process?

The research question is the first step to expressing an idea, but since it is in an interrogative form, the researcher might also seek to provide a prospective response to that question, which is usually known as the hypothesis. The **hypothesis** is a statement that underlines the point which the research seeks to prove. It is like a non-interrogative form of the research question. So, instead of posing the research question 'Do court clerks improve the judicial process?', the hypothesis would state that 'Court clerks improve the judicial process by...'

¹ Frances K. Stage & Karen Manning, *Research in the College Context: Approaches and Methods* (2003 Brunner-Routledge, New York) 12

or 'Court clerks do not improve the judicial process because...'. Usually the research seeks to confirm, prove or explain the hypothesis.

The research question, as the first stage of the research process, sets the researcher on the journey and begins the inquiry. After determining the research question, and sub-questions, the next step is to begin to gather information to shape the direction of the research. During this period, the research question may be modified as the researcher gains more knowledge about the selected field, and it is at this point that the researcher frames the hypothesis and begins to adopt the methodology.

The **methodology** determines the procedure which the researcher intends to adopt in the gathering of information. This describes how the research is going to be conducted, either through interviews, through the use of study materials, which may be primary or secondary sources, internet searches, or field research.

The initial stage of the research process usually consists of literature research to find out what has been said about a particular topic, the nature of the problem being researched (is there a problem?), possible areas for intervention, and a host of other issues that may have been raised from the research question and sub-questions. After initial research to understand the answers to some of these points raised, the researcher can develop a research proposal, which would further clarify the details of the work to be undertaken. A research proposal may be written for a particular audience, and where this is the case, it is important to follow the guidelines set by the target audience. A typical research proposal would usually contain some or all of the following components:

Abstract – This is a summary of the research, which is usually between 200 and 300 words. It contains a general statement about the area of research, introduces the problem to be addressed by the research and contains a hypothesis. An abstract is usually the first indicator as to the strength of a particular research work/project, and can form the basis for accepting the proposal.

Statement of the Problem – This provides a background of the main issue for consideration in the proposed research and identifies the problem to be addressed. Remember that research must have a *purpose* so this introduces the purpose of the particular research project.

Objectives of the Research – After stating the problem, the researcher must state how the proposed research will address the problem in a way that adds value. Such value may be added through the introduction of policy mechanisms or recommendations, or by adding to the body of knowledge on a particular issue. Sometimes, a distinction may be made between the aims/objectives and the significance of the work, the former stating the importance of the research and the latter its actual tangible contributions.

Research Problem and Hypothesis – as stated above

Methodology – as stated above

Scope – This provides a ‘map’ of what the research work will do and how it will do it. Usually, the scope points out the areas that the research will address, and presents a structural ordering of how it will address those issues. The scope is a very important part of the research as it provides a layout that guides the writer, and eventually the reader, in addressing the work.

Sometimes, the proposal may also contain a **table of contents** which provides a graphical layout of the entire work, depicting chapters, sections, sub-sections and so on. The table of contents should usually provide all the information about the content of the work, so that, if properly written, it can guide a reader in making quick and accurate assessments about the substance of the work.

The above discussion is an introduction to the general concepts that the researcher will have to contend with when beginning a research project. Throughout the rest of the course, reference will be made to some of these concepts, and practical exercises will be employed to enhance understanding.

Importance of Research to Legal Studies and Practice –

Lawyers spend a great deal of their time reading and writing, preparing briefs, reports, letters, and they engage in numerous writing projects/assignments. It is important, therefore, to ensure that the written work produced by a law student or a lawyer is up-to-date and structurally accurate, since the work of the lawyer goes a long way to shaping agreements and policies for public and private sector institutions.

The research materials relevant to lawyers for the execution of their jobs are mostly documents that deal with legal issues, such as legislations, case reports, and legal agreements. During their legal training, lawyers learn where and how to find these materials which are known as sources. It is after finding these sources that the lawyer can develop his/her document based on relevant information collected from the sources.

Legal research therefore involves three very important processes, the first of which is finding the relevant sources. This can be done in a library, at a law office or government office, online, or anywhere that the lawyer can find authentic legal sources. Finding the right materials is a very important step, because knowing what to look for can 'make or break' the resulting document. The law student or lawyer can be assisted here by a reliable law librarian or research assistant with a good general knowledge of available sources on different legal subjects. After finding the materials, the lawyer must know how to use them, that is, he/she must know how to find the relevant information from the sources which he/she has. There are different ways to get information from sources, and if the researcher does not know where or how to look within any particular source, then he/she might get little or no information from the correct source, or end up collecting irrelevant or wrong information. Even where the researcher has found the right source and the right information, they must know how to use that information. Important issues such as citation, language and arrangement, among others, can greatly reduce the value of the hard work of a researcher.

When research is well-undertaken and concluded, it can produce very insightful material that is expected to contribute to the body of knowledge in any particular field of legal studies and practice. Legal research is important for the following reasons:

a) **Discovery:** Research is all about discovery. Through research, the law student or the lawyer discovers new arguments, legal provisions, positions on relevant topics, and new ways of doing things. Research can also reveal new aspects and approaches to old issues. For instance, where a general idea has

been developed on a particular issue, effective research can enable the researcher discover and reveal new perspectives on such issues.

b) **Clarification:** Good research helps the researcher to clarify their ideas on issues pertinent to their work. Where a researcher is able to find reliable sources on an issue, these can enlighten the researcher, especially where there had been confusion or misconceptions about any issue.

c) **Advancement:** Effective research contributes to the general advancement of knowledge, understanding and processes. Where a good law student or lawyer discovers new issues or errors in old thinking, they can reveal this constructively, so as to correct/clarify the position and advance knowledge in that area. This is a very important way legal systems have developed over time.

d) **Comparison:** Research helps compare different ideas, especially where they are conflicting. It develops the researcher's analytical skills by providing them with different ways of addressing any particular issue. It also helps compare different sources, documents, and even legal systems. This broadens the scope of the researcher's thinking, helping them discover more, clarify issues and advance theirs and general knowledge.

e) **Authentication:** Research is important for the purpose of authenticating the thoughts, ideas, and positions of the researcher. While thoughts and opinions are generally expressed in different forms, when research has been undertaken on a particular issue, the results of the research possess a considerable level of authenticity, depending on the quality of the research, which mere thoughts and opinions may not possess.

There are several more reasons why research is important to the law student or lawyer, especially since the job of the lawyer in an adversarial system is to build his case and fall that of his opponent. Research helps the lawyer find material to do this, and when combined with strong analytical skills, success is practically guaranteed.

Qualitative and Quantitative Research

Qualitative research, in very general terms, refers to non-numerical research, which is usually categorized as theoretical, while quantitative research is research that has to do with the collection and analysis of numerical data. Legal studies usually rely on qualitative research methods that involve the

Doctrinal or theoretical legal research can be defined in simple terms as research which asks what the law is in a particular area.

Ian Dobinson and Francis Johns 'Qualitative Legal Research' in Michael McConville and Wing Hong Chui, eds, *Research Methods for Law* (2007 Edinburgh University Press, Edinburgh) 18-19

utilization of study materials, which may be primary or secondary sources, and intellectual analysis of phenomena. Qualitative research may be doctrinal or non-doctrinal, while quantitative research is non-doctrinal.

This does not mean that lawyers do not undertake quantitative research at all. On the contrary, quantitative research has gained more ground with the discourse on the application of scientific methods of research in all fields, particularly in the social sciences. Notwithstanding the use of quantitative research in law, it is still more popular in other areas of the social sciences such as sociology and psychology, as lawyers continue to rely predominantly on

All other [non-doctrinal] legal research can be generally grouped within three categories: problem, policy and law reform based research. It is accepted that these categories are not mutually exclusive and are identified in terms of an assessment of what a piece of research is largely about.

Ian Dobinson and Francis Johns 'Qualitative Legal Research' in Michael McConville and Wing Hong Chui, eds, *Research Methods for Law* (2007 Edinburgh University Press, Edinburgh) 19

qualitative research for their work.

The use of 'experiment' is normally ascribed to scientific methods of research, and is considered as producing generally more reliable data. Experiments do not always require labs and burners, but in social sciences and the humanities, which are concerned more with human behavior, would more likely involve the collection of information from assessing the behavior of human beings, through the use of questionnaires, interviews, surveys and other methods recognized in the relevant field of study. Statistics can be derived from such data, resulting in numerical representation of the data collected through the chosen method of experiment.

Quantitative research deals with numbers, statistics or hard data whereas qualitative data are mostly in the form of words.

Wing Hong Chui 'Quantitative Legal Research' in Michael McConville and Wing Hong Chui, eds, *Research Methods for Law* (2007 Edinburgh University Press, Edinburgh) 48

Before undertaking research in any field, one of the things that the researcher must determine is whether s/he intends to conduct a qualitative or a quantitative study. Some of the factors to consider are:

1. What kind of information do you intend to collect or use for your research?
2. What do you intend to do with the information collected?
3. What kind of results do you plan to get?
4. What do you intend to do with the results?

Depending on the answers to these and other related questions, the researcher can determine whether or not the proposed research is of a qualitative or quantitative nature. Where the information required would involve numeric data, such as the number of clerks who work in the judicial sector and how that enhances the capacity of the judiciary, there would be need to undertake quantitative research of some sort. On the other hand, where the information required is an analysis of the effectiveness of the judicial sector based on the researcher's general perceptions about the sector, this would involve qualitative research. The same research topic may, in separate instances, involve qualitative and quantitative research, depending on the nature of work undertaken by the researcher and on the methodology employed.

...quantitative research method is a supplement to traditional legal research in order to investigate complexities of law, legal actors and legal activities. In particular, the tradition of quantitative research is strong in the field of criminal law and criminology, corporate law and family law.

Wing Hong Chui 'Quantitative Legal Research' in Michael McConville and Wing Hong Chui, eds, *Research Methods for Law* (2007 Edinburgh University Press, Edinburgh) 47

There can be a mix of qualitative and quantitative features in a single research work, in which case, the researcher would be undertaking field study to determine some numerical functions, while also applying primary and secondary sources to contribute to the result of the research. An example would be a research study on the effectiveness of the judicial sector, which seeks to analyse data on the number of judges within the sector, their opinion of the contribution of court clerks to their work, and constitutional or other legal provisions dealing with the functions of court clerks. While the research would require the collection of data on the number of judges and their opinions, it

would also require doctrinal research into constitutional and other legislative matters.

As stated earlier, methodology is very important in determining the type of research which the researcher intends to employ, as well as the result, aim and significance of the research. Where the research aims to introduce a policy intervention, it might focus on quantitative methods, for instance, where the result is to adjust the number of court clerks in the court system. On the other hand, where the research seeks to provide analytical data to support legal or policy reform, it may employ a qualitative method, for instance where the purpose is to redefine the role and function of court clerks.

Whatever the case, it is important to determine early enough in the research process what type of research method is suitable for the result which the researcher seeks to pursue.

Law and Empiricism

Empirical research usually involves the collection of data or information, whether numerical or non-numerical. Nevertheless, many references to empiricism have been related to quantitative research, perhaps because of the more obvious emphasis on the content and accuracy of data in that method. The objective of the research(er) determines the type of information to be gathered and how it is collected.

The distinctive feature of empirical legal research is the use of systematically collected data, either qualitative or quantitative, to describe or otherwise analyze some legal phenomenon.

Herbert M. Kritzer, 'The Nearly Forgotten Early Empirical Legal Research', in Peter Cane and Herbert M. Kritzer, *The Oxford Handbook of Empirical Legal Research* (Oxford, Oxford University Press 2010) 883

The use of empirical research in legal studies is mostly in the form of gathering data from primary sources such as legislations and case law, but, in some cases, field research is also employed. This latter methodology has its root in American legal-academic culture, with encouragement from American institutions, but the practice has since spread, and is being progressively encouraged.² Despite this growing interest in the subject, there remain concerns that there is not enough empirical research in the legal field. This may be due to the fact that lawyers concern themselves predominantly with 'reasoning' projects where they analyse already available data which is contained in primary sources, from legislations to government reports. Therefore, lawyers employ the use of 'observational data' more than they do 'experimental data'.³

Whatever the choice of data generation, empirical research requires significant work with data, such as 'collection', 'coding' and 'analysis', all of which require

... other than issues of data generation and control (statistical versus experimental), experimental and observational studies are not altogether different Either way, scholars tend to execute them in four steps: they design their projects, collect and code data, conduct analyses, and present results.

Lee Epstein and Andrew Martin, 'Quantitative Approaches to Empirical Legal Research', in Peter Cane and Herbert M. Kritzer, *The Oxford Handbook of Empirical Legal Research* (Oxford, Oxford University Press 2010) 904

² See Peter Cane and Herbert M. Kritzer, *The Oxford Handbook of Empirical Legal Research* (Oxford, Oxford University Press 2010) 2.

³ Lee Epstein and Andrew Martin, 'Quantitative Approaches to Empirical Legal Research', in Peter Cane and Herbert M. Kritzer, *The Oxford Handbook of Empirical Legal Research* (Oxford, Oxford University Press 2010) 904

special attention at different stages of the research process, and for which researchers in other fields like the social sciences have developed theories and mechanisms.⁴ This means that the lawyer will be working in unfamiliar territory, where there is uncertainty about the rules of the game, since many of these methodologies are not taught in legal academic institutions. Nevertheless, the increasing interest in empirical legal studies and research means that the importance of an interdisciplinary approach to understanding and conducting empirical research in the legal field has been recognized and is underway.

Sample Abstract (200 Words)

Court clerks have been a key component of the court system since the establishment of courts, and their essential role has been to provide support services to the officers of the court. In recent times, questions have been raised about their effectiveness and their actual contribution to the court system, especially with increasing reports of cases of corruption and incompetence in the judiciary. (1) It is therefore important to review the role of these officers, and restate their importance to the system, or lack thereof. It is in this light that this paper seeks to provide a detailed analysis of the role and functions of clerks in the contemporary court system, while also giving a historical analysis of the development of these functions.(2) Important questions will be addressed regarding the qualification of clerks, the legal basis for their position, as well as their actual contribution to the courts.(3) The paper will show that court clerks have become an increasing asset to the court and to the judicial sector as a whole, but there is a need to review their role to

⁴ Ibid.

meet contemporary demands and challenges so as to ensure optimum effectiveness of one of the most important sectors of government.(4)

(1) – Introduction/Background

(2) – Aims and Objectives

(3) – Scope of the research

(4) - Hypothesis



For further assistance, visit www.yararena.org or email info@yararena.org

Follow us on Twitter
(Yararena)



(@The_Yararena) + on Facebook

