

UNIVERSITY OF LAGOS
FACULTY OF LAW
LEGAL RESEARCH AND PROJECT WRITING (LAW 501) LECTURE NOTES

RESEARCH ETHICS

Research has become one of the top priorities for public and private actors all over the world because of the effect of information gathering, management and analysis on governance and lifestyle. With the degree of information that gets collected, and the manner in which the information is used, and even manipulated, it is important to observe rules that would govern the management of that information. This class will help the student understand the importance of research ethics, both in the conduct of research (information gathering) and in writing. At the end of the class, the student should be able to:

- a. know and appreciate the meaning and effect of plagiarism
- b. learn to avoid plagiarism
- c. apply certain rules to ensure that the rights of others are not violated during the research process
- d. know how to express non-academic concerns in an academic manner
- e. understand the importance of research in the shaping of ideas, and how to manage that process
- f. manage the information gathering and utilisation process in a professional manner

Ethics concerns the humanity of human conduct. In relation to social research, it refers to the moral deliberation, choice and accountability on the part of researchers throughout the research process.

Rosalind Edwards and Melanie Mauthner, 'Ethics and Feminist Research: Theory and Practice', in Melanie Mauthner et al, *Ethics in Qualitative Research* (London, New Delhi, Sage Publications Ltd 2002)

Plagiarism

Plagiarism is easily the most distasteful infringement of process in academic culture. Since research has to do with the gathering and utilisation of information, which includes the ideas of others, it is important to ensure that all ideas and sources of information used are acknowledged. In the same vein, it is also important that the researcher does not try to pass off the works of others as their own, intentionally or unintentionally. Therefore, because it is quite difficult to determine when or whether an idea is entirely the result of the researcher's own efforts, researchers must be very careful to ensure that they take note of all the material they consult or use during the course of their research, and acknowledge ideas similar to theirs which have been published earlier than theirs.

To take the words or ideas of another without properly acknowledging them is to commit plagiarism – a serious form of dishonesty.

Doug Babington and Don LePan, *The Broadview Pocket Guide to Writing* (Ontario, Broadview Press 2005) 90

Plagiarism may be blatant or careless, but either way, it is considered a serious infraction in the academic environment, and will usually be punished severely.¹ Therefore, the researcher must be very careful to acknowledge the sources of information and ideas when such information is not general knowledge. Where the researcher is not sure about the general availability of the information, then it is safer to provide a reference for it. There are several ways in which a researcher can plagiarise; for example, ‘copy-pasting’ without quoting AND acknowledging the source is a very common act of plagiarism. Where the researcher collects information from a source, but expresses it in their own words, this could also amount to plagiarism if the source is not acknowledged.

Plagiarism includes many kinds of academic violations, including the following: turning in an entire work composed by someone else and claiming it as your own; using someone else’s exact words in your writing without acknowledging the source; paraphrasing someone else’s work or using someone else’s ideas in your writing without acknowledging the source.

Susan K. Miller-Cochran and Rochelle L. Rodrigo, *The Wadsworth Guide to Research* (e-book, Cengage Learning) 142

To avoid plagiarism, the researcher must learn to correctly acknowledge resources used during the research process. This could be done with the use of quotations, such as

Greenberg notes that “court clerks are involved mostly with traditional clerical duties, and have not been integrated into more substantive aspects of the judicial process”.

Or the researcher may paraphrase,

As Greenberg notes, clerks are not involved in substantive judicial assignments but their tasks are restricted to traditional clerical work.

The information contained in both sentences is the same, but while the first quotes the writer directly, the other paraphrases by writing the idea expressed in the original work in the

¹ Susan K. Miller-Cochran and Rochelle L. Rodrigo, *The Wadsworth Guide to Research* (e-book, Cengage Learning) 143

researcher's words. Sometimes, the reference to the author is not made directly in the body of the work, and will usually be contained in the reference, for example

Despite developments in technology and the execution of public processes, clerks are not involved in substantive judicial assignments but their tasks are restricted to traditional clerical work.

In all these instances, it is imperative that the researcher acknowledge the source of the idea in order to avoid a claim of plagiarism. Since it is impossible to know all the ideas that have ever been expressed about any particular issue, it is important to conduct substantial research to ensure that the field is covered significantly. While it may not be possible to cover EVERY source, the researcher must be sure to consult classical sources on a particular issue. One way to ensure that the researcher has consulted some of the most important material in any particular field is by looking up references and bibliographies written by authors in that field to note the recurring names and materials. This can be very helpful in helping develop the researcher's reference base for the research, as well as for avoiding plagiarism.

Aiming to enjoy the research process is the first way to avoid plagiarism. When the researcher chooses a topic of interest to research, the information gathering process is not a drone, but is rather a fun exercise that is both exciting and informative.

It is also important to read as widely as possible when doing research, so as to note the different ideas that have been expressed regarding a particular topic, and this can also help the researcher develop their own idea.

Conflict of Interests

The concept of conflict of interests is not alien to lawyers who must watch out for such conflicts in the course of carrying out their professional duties. This usually arises where the objective interests of a thorough research may be threatened by some personal bias which the researcher might have. It is not always easy to identify cases of conflict, but when such issues are brought into question, they affect the quality of the research work or the significance attributed to it. This is particularly so when the researcher is involved in field research, especially where this involves the study of human subjects.

Researcher conflict of interest may stem from any of several motivating forces, including altruism, a desire for personal recognition, or the possibility of financial reward.

Sana Loue, *Textbook of Research Ethics: Theory and Practice* (New York, Kluwer Academic 2000) 100

Conflicts of interest are usually discussed under scientific research methods and processes because there are more standardised rules for objectivity in such processes, and research in those areas influences commercial markets such as drugs (pharmaceuticals) and tobacco. A researcher who is being paid by a tobacco company to study the dangers of tobacco to human health may not be as

trusted as a government official conducting the same research for the Ministry of Health. In the same vein, a government official conducting research on the need for increased government intervention in the private sector may be seen as having a conflict of interest if their job would be at risk with the removal of intervention.

A conflict of interest involves the abuse -- actual, apparent, or potential -- of the trust that people have in professionals. The simplest working definition states: A conflict of interest is a situation in which financial or other personal considerations have the potential to compromise or bias professional judgment and objectivity. An **apparent conflict of interest** is one in which a reasonable person would think that the professional's judgment is likely to be compromised. A **potential conflict of interest** involves a situation that may develop into an actual conflict of interest. (Emphasis added)

Columbia University's Responsible Conduct of Research (RCR) Foundation Text on Conflicts of Interest, available at http://ccnmtl.columbia.edu/projects/rcr/rcr_conflicts/foundation/index.html

The above examples show that conflict may be tangible or intangible, the former referring mostly to financial or other material benefit that might be seen as influencing bias, and the latter referring to issues such as effort, conscience, and obligation.² In many academic institutions across the world, there are conflict of interest regulations to guide researchers, and in some countries, there are laws in this regard. The reason for this is that research and development are considered very important aspects of growth, institutionally, nationally, and even globally, and there is an interest in avoiding the smear of bias that might diminish the quality of the work.

Although there are no known rules relating to conflict of interest in our research, it is important to be aware of the ethical considerations involving these types of situations, especially because of the influence of value judgements and personal biases on research in the social sciences and humanities. Most of the rules relating to conflict of interests are applied more seriously in the natural sciences, but they are important in every field that seeks to exhibit influence in society through research and knowledge production and development. Some of the areas where researchers in the legal field should exercise caution, in order to avoid diminishing the value of their research with their biases, will be discussed below.

Morality and Research

The debate about the relationship between law and morals is an ongoing one, the end of which is not in sight. Nevertheless, it must continuously be addressed, especially in the academic field, where objectivity is prized. Our moral attitudes and choices are determined by factors that are usually out of our control, such as religious upbringing, social and cultural environment, or our

² See the Columbia University RCR, Foundational Text on Conflicts of Interest, http://ccnmtl.columbia.edu/projects/rcr/rcr_conflicts/foundation/index.html

professional circle. Whatever the case may be, it is important to be aware of our morality, especially the role it might play in our professional lives.

... our moral outlook is a function of accretion over time not of deep reflection going in the direction of consistency and coherency This is not to say anything about whether greater coherency in moral outlooks is a good or bad thing. It is simply to recognise the fragmented nature of our individual moral psyches.

Ian Gregory, *Ethics in Research* (London, Continuum 2003) 67-68

Morality may be a guide towards doing what is ethical in cases that involve ethical dilemmas. For instance, where a researcher is confronted with a choice whether or not to use a piece of information that was obtained legitimately, but the release of which might be harmful to the research participant, the researcher may be guided by morality in deciding what option to choose. In this case, morality does not directly affect the objectivity of the research, although it indirectly affects the content of the research. These kinds of choices are more within the control of professional ethical regulation as they deal with the conduct of research. On the other hand, the researcher's morality might affect the result of the research by forming preconceived notions that form the foundational basis for the research. In this case, the researcher must be careful to exude as much objectivity as possible, perhaps by recognising contrary opinions, because while this type of moral choice cannot be judged by professional ethical standards, it may affect the objectivity of the research and can reduce the level of trust that is placed in the result. Having said this, it is important to note that much social research results in shaping moral and cultural perspectives, whether or not it aims to do so, but the manner in which it does so will contribute to the level of trust ascribed to the particular piece of research.

... a growing number of instances in which the ethical value accorded knowledge accumulation per se, clashed, sometimes cataclysmically, with current philosophical and everyday views about morality have brought research ethics into the spotlight.

Donna M. Mertens, Pauline E. Ginsberg, *The Handbook of Social Research Ethics* (California, Sage Publications Inc. 2009) 581

The five principles that govern social science research, especially where human conduct is under observation and human subjects are involved in the research, are: nonmaleficence, beneficence, autonomy, fidelity and justice.³

Culture and Research

Many of the issues that arise as a result of moral consideration usually arise under cultural considerations that might guide the researcher's conduct during the research process. It must be

³ See Donna M. Mertens, Pauline E. Ginsberg, *The Handbook of Social Research Ethics* (California, Sage Publications Inc. 2009) 12

remembered that culture is dynamic, and researchers, particularly in the social sciences and humanities must understand that issues relating to morality and culture are in a state of constant and permanent flux, so that their research is not bound too tightly with such issues.

Whereas the natural sciences ... seek general laws that govern all empirical phenomena, the social sciences study those realities that our values consider significant. Whereas the natural world itself indicates what reality to investigate, the infinite possibilities of the social world are ordered in terms of "the cultural values with which we approach reality".

Clifford G. Christians, 'Ethics and Politics in Qualitative Research', in Norman K. Denzin and Yvonna S. Lincoln eds, *The Landscape of Qualitative Research: Theories and Issues* (California, Sage Publications Inc. 2003) 214

Again, objectivity is key, so it is important to test cultural values within the framework of professional standards which would usually seek to ensure the observance of the five ethical principles mentioned above. In a world that is becoming increasingly interconnected, it is important for researchers to work within the mindset of such widespread coverage, so that parochial values do not form the foundational basis for crucial research.

Politics and Research

The role of politics in determining social science research patterns should not be underestimated, as, in developed societies, much funding for research comes from the public sector. Therefore, researchers must be sure to maintain the dichotomy between the funding and the result. Issues related to conflict of interest come to play here. Researchers must be sure to remain as objective as possible, so where there is a connection between their work and political actors and processes that might lead to issues of conflict being raised, it is best to address such issues tactfully so as to salvage the benefits of the research.

On the other hand, researchers should also be aware of the effect of their work on influencing political developments, positively or negatively. The ethical principles must be applied so as to ensure that the research does more good than harm, and the researcher must also consider the political and other implications of their work. Research hardly exists in a vacuum, and can be used to further all kinds of purposes, so the researcher must understand the different purposes to which their research can be put, so as to guard against those that are not only unintended but also undesired.

If inquiry is inevitably ideological, the major challenge is to pursue the research that most deeply expresses one's political and valuational investments.... if science is politics by other means, then we should pursue the inquiry that most effectively achieves our ends.

Mary M. Gergen and Kenneth J. Gergen, 'Qualitative Inquiry: Tensions and Transformations', in Norman K. Denzin and Yvonna S. Lincoln eds., *The Landscape of Qualitative Research: Theories and Issues* (London, Sage Publications Inc., 2003) 594

Data Collection and Management/ Consent and Confidentiality

As stated in earlier classes, research involves a significant amount of data collection and usage. Sometimes, the process involves mostly secondary book-based research, in which case, the researcher is careful to guard against unethical practices relating to fabrication and plagiarism. At other times, the researcher is involved in field research, which involves the gathering of raw data and processing the data for the purpose of the research. In many areas of research in the social sciences and humanities, research may involve human subjects, whose information forms a significant part of the work. It is therefore important for the researcher to understand the rules relating to the collection and use of the data.

In collecting data, the researcher must have the consent of the human subject. Consent must be informed, and this means that the subject must know why the information is being collected and to what use it will be put. Without the consent of the subject, such data would be unusable, and the research could be invalidated. Where consent is collected for one purpose and the research is used for another purpose, that is also unethical. In societies where ethical processes in research are systematically regulated, Institutional Review Boards (IRBs) are responsible for ensuring that the researcher is ready for data collection. They make sure that the researcher has taken care of issues relating to consent even before the latter goes into the field.

The emphasis about consent is not only a moral imperative reflecting a proper regard for the participants in a research, but also a recognition of the obligations owed to the wider research community.

Ian Gregory, *Ethics in Research* (London, Continuum 2003) 65

Consent, apart from being informed, must also be voluntary. Rules relating to capacity to contract may also apply here, so that there are conditions guiding the collection of consent from minors, disabled, and even vulnerable people. The researcher must make sure, especially when participants are being paid, that conduct relating to payment and collection of data do not affect the quality of the consent given. Rules relating to undue influence would apply here.

Even after data has been collected from human participant, it is important for the researcher to manage that data properly. This is especially so when the subjects have indicated that they would like their identities to be withheld from the publication of the research. Assurance of confidentiality is very important, and where confidentiality has been assured, the researcher must make sure, under ALL circumstances, to keep the details of the research participants from publication. While the information relevant to the research should be used, information relating to the identity of the participant is usually what is kept confidential, and this could include name, political or vocational affiliation, or any other personal information that the participant feels should be kept confidential. Where the researcher needs certain information to be published in the research, they must find participants who are ready to divulge such information and have it published.

Managing data collected during research covers issues ranging from access to storage. The researcher must be sure that access to data is restricted in line with the wishes of the participants. The researcher must also ensure that the data is stored safely so that it is not stolen or used for other means. Using codes to store data may help in safeguarding the data so that even if it is stolen, it cannot be used. Also, ensuring that the facilities where the data is kept are kept safely.