**ADVANCED LEGAL RESEARCH METHODOLOGY: PRACTICE AND PROCEDURE**

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**APPRECIATION**

It is a great pleasure for me to speak on the *Practice and Procedure of Advanced Legal Research Methodology* in this gathering of erudite legal minds. I would like to express my profound gratitude to the Administrator of the National Judicial Institute (NJI), Hon. Justice Salisu Garba, OFR, the Secretary of the Institute, the Directors of Studies and Research, and indeed the entire workforce of the Institute for making me a part of this important workshop.

To the learned participants attending this workshop, I say, congratulations on your selection by your various judiciaries to represent them here. You are employed to work closely with judicial officers in order to assist them in attaining the ends of justice. This means that your major role is to conduct ‘legal research’, which refers to the task of ascertaining the precise state of the law on a particular point. A good researcher is not only required to master our laws and legal system. He must also be very familiar with related issues such as: sources of legal information, gathering information using effective research tools and strategies, evaluating information and understanding the legal implications thereof, and ultimately, harnessing these skills towards speedy and effective dispensation of justice. This, in a nutshell is what ‘research methodology’ is all about. It is the concept of how research should be done, and it cuts across every aspect of the research process.

Accordingly, this paper attempts an overview of important themes in legal research, such as: objectives of research, methods and methodology, types of research, sources and tools of legal research, and research design.

1. **INTRODUCTION**

The Oxford Advanced Learner’s Dictionary of Current English defines “research” as a careful investigation or enquiry specifically through search for new facts in any branch of knowledge[[1]](#footnote-0).

Conducting a research involves assembling information of facts to verify a proposition or ascertain an assumption. It is an investigation for the authentication of new theories in order to supplement existing theories by new information. Research therefore involves identification of a research problem, the ascertainment of facts, their logical ordering and classification, the use of inductive and deductive logic to interpret the collected and interpreted facts, and the arrival of conclusions premised on and supported by the collected information. An approach becomes systematic when a researcher follows certain scientific approach. It therefore means that any piece of knowledge that was merely or accidentally uncovered is not a research.

Arising from the foregoing background, we may define Legal Research as the process of finding the laws, rules and regulations that govern activities in human society. It involves ascertaining what the law is on an identified topic or in the given area as well as the enquiry into law with the view to expanding the science of law[[2]](#footnote-1).

1. **OBJECTIVE OF LEGAL RESEARCH**

Law does not operate in a vacuum. It has to reflect social values, attitudes and behavior. All collective human life is directly or indirectly shaped by law, and in a modern welfare state, law is an effective instrumentality of socio-economic transformation[[3]](#footnote-2). However, societal values and patterns are dynamic and complex, and the law, being the ‘social engineer’, must follow suit[[4]](#footnote-3). It also follows that there is need to devise a systematic investigation into these aspects of law which helps in interpreting or validating existing laws, and their social relevance and challenges (if any). The development of the law will be subjected to archaic assumptions and outdated rules that may be out of tune with those the laws are supposed to govern if there is no consistent research to evaluate its operation within a particular socio- legal system.

Finding what the law is in a particular area is not an easy task, because law touches every aspect of life. There may be several statutes with different amendments scattered in different volumes. In addition, these statutes and provisions may be supplemented from time to time by a bulk of rules, regulations, directives and policy guidelines. There could also be various court pronouncements either expanding or limiting the applications of these rules by interpretation. Decisions of Appelate Courts, and the Supreme Court in particular aptly depict the fluidity of legal doctrine. Sometimes, split decisions or even conflicting decisions of the court make it difficult to determine how the next analogous case will be decided. Again with globalization, and the distruptive power of technology, disputes are becoming more complex than ever before as there are many emerging legal issues that may have no local precedent. The researcher must then find the law in other similar jurisdictions[[5]](#footnote-4), and apply creative analysis to the existing case law.

Every research has specific goals or objectives. The objective of any given research may fall under either of the following broad categories:

1. To identify the legal consequences of specific set of facts.
2. To study the functions of particular legal institutions in a specific economic, social, and political context.
3. To ascertain the position of law on a given issue
4. To highlight ambiguities and inbuilt weaknesses of law
5. To critically examine legal provisions, principles or doctrines with a view to see consistency, coherence and stability of law and its underlying policy
6. To undertake social audit of law with a view to highlighting its impact in order to make suggestions for improvements.

Notwithstanding the set objective of a specific research, the primary aim of conducting any legal research is finding the answer to a legal question in the most time effective way and knowing that you have searched in all the relevant sources. However, being aware of the existence of specific source materials in law does not mean anything unless they are used and their use is maximized thus, skill, technique and a well grounded familiarity with research tools compose the art of legal research.

1. **RESEARCH METHODOLOGY**

Research is an endeavor to discover answers to intellectual and practical problems through the application of scientific method. The process includes articulating the problems, formulating a suitable hypothesis, collecting the facts or data in the area of problems selected, analyzing the facts and data so collected, with an intention of reaching certain conclusion in the form of solution towards the concerned problems or certain generalization for some theoretical formulation.

The term ‘Research methodology’ refers to the systematic approach/procedure to the methods used to solve a research problem and to reach a new conclusion. It is the broad framework within which a particular research is undertaken.

This term is often confused with ‘research method’, which  refers to the tools and techniques used by researchers  to generate and analyze data. Usually, it is the subject matter of research that determines the method to be used in a research.[[6]](#footnote-5)

A simple analogy is in building a house. Research methods are the tools in the carpenter's toolbox; while Research methodology is the construction plan. In bringing out the correlation between research methods and research methodology, C.R. Kothari observed:

*Research methodology has many dimensions and research methods do constitute a part of the research methodology. The scope of research methodology is wider than that of research methods. Thus, when we talk of research methodology we not only talk of the research methods but also consider the logic behind the methods we use in the context of our research study and explain why we are using a particular method or technique and why we are not using others so that research results are capable of being evaluated either by the researcher himself or by others. Why a research study has been undertaken, how the research problem has been identified, in what way and why the hypothesis has been formulated, what data have been collected and what particular method has been adopted, why particular technique of analysing data has been used and a host of similar other questions are usually answered when we talk of research methodology concerning a research problem or study[[7]](#footnote-6).*

Thus, research methods form an integral part of the research methodology and as procedural rules, they fit themselves within the broad framework of research methodology.

**3.1 Approaches to Legal Research**

Research methodology could be doctrinal; non-doctrinal; or comparative. Doctrinal research (also called "black letter", or ‘desk’ research ), focuses on the letter of the law rather than the law in action. Using this method, a researcher composes a descriptive and detailed analysis of legal rules found in primary and secondary sources. The purpose of this method is to gather, organize, and describe the law; provide commentary on the sources used; then, identify and describe the underlying theme or system and how each source of law is connected. The researcher must also identify ambiguities and criticisms of the law, and offer solutions. Sources of data in doctrinal research include the rule/law itself, cases generated under the rule, legislative history where applicable, and commentaries and literature on the rule.

On the other hand, non-doctrinal research (also known as empirical or social-legal research), is research that employs methods taken from other disciplines to generate empirical data that answers research questions. Non-doctrinal research is used to study institutions, rules, procedures, and personnel of the law, with a view to understanding how they operate and what effects they have. It makes use of direct methods rather than secondary sources, and this helps you to arrive at more valid conclusions.

Comparative Legal Research involves a comparison of legal doctrines, legislations, and foreign laws. It highlights the cultural and social character of law and how it acts in different settings. So it is useful in developing, amending, and modifying the law.

* 1. **Types of Legal Research**

Depending on the goal and subject matter of research, specific types of legal research are imperative for certain purposes. The basic types of research are: Descriptive and Analytical Research; Applied and Fundamental Research; Quantitative and Qualitative Research, and; Conceptual and Empirical Research[[8]](#footnote-7). Each one of these is briefly discussed.

1. **Descriptive vs. Analytical Research**

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

1. **Applied vs. Fundamental Research**

Applied research or action research aims at finding a solution for an immediate problem. Here the researcher sees his research in a practical context. While in fundamental research or pure research or basic research, the researcher is mainly concerned with generalization and with the formulation of a theory. He undertakes research only to derive some increased knowledge in a field of his inquiry. He is least bothered about its practical context or utility. The central aim of applied research is to discover a solution for some pressing practical problem, while that of fundamental research is to find additional information about a phenomenon and thereby to add to the existing body of scientific knowledge.

1. **Quantitative vs. Qualitative Research**

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

Qualitative research, on the other hand, is concerned with qualitative phenomenon, i.e. phenomenon relating to or involving quality. For example, when a researcher is interested in investigating the reasons for certain human behaviour, say why people steal, his research becomes qualitative research. Unlike quantitative research, qualitative research relies on reason behind various aspects of behaviour.

1. **Conceptual vs. Empirical Research**

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

**4. LOCATING LEGAL DATA/INFORMATION**

In the past, legal research was only conducted in law libraries; but this is not the practice today, for a variety of reasons. One is that besides litigants and professionals working in law-related fields, many other people are now in need of legal information. For example, one might need instructions on how to file simple legal documents without the help of a lawyer. But the biggest explanation for the shift in how research is conducted is the advent of the Internet. The Internet allows us to find information on all kinds of legal topics, without the hassle of going out to a physical law library. If you’re trying to figure out the rules for incorporating a business, you can most certainly find instruction on the Internet. The same is true if you want to read the Supreme Court’s latest opinion on a particular topic. There are so many things you can find within minutes—but you have to know where to look to conduct legal research. Here, we’ll consider several options.

* **Traditional Law Libraries**

Despite the influence of technology, law libraries remain an excellent resource for the legal researcher. For one thing, they usually have a lot of legal books and resources that aren’t available on the Internet, or at least not without paying fees. Additionally, trained Librarians and other staff are available in traditional libraries to guide researchers, where necessary. Furthermore, you may be able access very expensive databases of legal resources (such as LexisNexis; Westlaw; Justor; HeinOnline; Law Pavillion; Legapaedia etc) through the Electronic library(E-library)[[9]](#footnote-8). Several law sites also provide free legal information, such as: FindLaw ;VersusLaw ; FastCase ; LoislawConnect; etc[[10]](#footnote-9).

* **The Internet**

With the advent of computers making the availability of information to one and all equipped with necessary hardware connected to the internet, Computer-assisted legal research (CALR) has changed the access to and understanding of the legal concepts[[11]](#footnote-10). The Internet is useful at every stage of research: when you’re trying to get general information about a topic, when you’re looking for specific legal sources, and when you’re trying to figure out what to do with the information you have uncovered.

Using the internet for research has many advantages:it makes research easy and fast; offers a wide variety of legal information; gives access to less popular legal ideas; offers up to date legal information; and can be interactive. On the other hand, the disadvantages associated with using the internet for research is the risk of error and inaccuracy in some materials. Therefore it is best to avoid using crowdsourced websites like Wikipedia and blogs as principal sources.

Besides the library and the internet, information can be accessed directly from law related organizations such as courts, law offices, law based institutions[[12]](#footnote-11) and other conventional institutions relevant to the subject matter of research .

1. **RESOURCES USED FOR LEGAL RESEARCH**

In the process of ascertaining the state of the law on a particular issue, a researcher has to choose which materials to use. Generally, legal sources can be broken down into two categories: primary and secondary sources[[13]](#footnote-12), although some authors consider index or finding tools as a third category.

**5.1 Primary Sources**

The sources that contain original information and observations are known as primary sources of information. The law found in primary sources can take many different forms. They include cases, statutes, administrative regulations, local ordinances, state and federal Constitutions, and more[[14]](#footnote-13).

Primary sources are often more difficult to read and digest than secondary sources, but it is unwise to rely solely on secondary sources. This is because laws can quickly change as courts issue new decisions or the legislature passes new laws. You won’t always see these changes reflected in secondary sources. On the other hand, looking at primary sources is the quickest way to get the most up-to-date information.

Another reason to rely more on primary sources is that it is more detailed and specific than secondary source. For example, assuming your dog broke through the fence and bit a neighbor who was stealing some items from your yard, you would want to know whether you are liable for the neighbor’s injuries given that the dog was fenced in and it was not intentionally released; and that the neighbor was trespassing on your property. You may find a secondary source that explains your liability when your dog bites someone, or your responsibility to a trespasser injured on your property. But by looking at primary sources, you might find a case or series of cases with very similar facts to the situation you’re in, helping to put these two legal issues together into one. This will allow you to see how a court may apply the law to the facts of your case.

Finally, primary sources are very important because courts give them much more weight than they do secondary sources. Secondary sources only tell courts what legal scholars say about a legal principle, and courts want to see the actual source of the law itself. If the court is required to follow the primary source—for example, because it was issued by a higher court in the same jurisdiction—the court will certainly want to see it in original form.

It is important to use primary sources when you’re trying to put together a document or an argument that carries legal weight. As we’ve explained, courts attach greater importance to primary sources than secondary sources. It’s also very important to use primary sources when you want to know exactly what the law says. Secondary sources may explain the law, but they won’t be able to give you the full detail of what is actually there. Although reading primary sources of law can be difficult, it is very important to do it if you really want to understand the details.

* 1. **Secondary Sources**

While primary sources are the texts of laws themselves, secondary sources are documents that interpret or discuss the primary sources[[15]](#footnote-14). This may include textbooks, journals, newspaper articles, online posts, dictionaries, encyclopedias[[16]](#footnote-15), etc. The depth of treatment you get from any given secondary sources can vary a great deal. Some secondary sources are very detailed and very helpful, while others may provide only a broad, general overview of a topic. Hence, finding the appropriate secondary source will depend, largely on what stage you are in your research. At the beginning, you may need only enough information to get basic foundation of your research topic. But as your research progresses, you may want to find secondary sources that provide much more specific treatment of your legal issue.

Secondary sources are a logical place to start when you do not know anything about the topic you are researching. A secondary source can often explain the basic concepts you’ll encounter in primary sources, making it easier to read them. It will also often cite some primary sources, thus helping to deepen and expand your research[[17]](#footnote-16).

* 1. **Evaluation of the Sources**

All of these published legal materials can appear in more than one format, including printed books, electronic databases, digital images, microforms, compact disks (CD-ROMs and DVDs), videos, and audiocassettes. Also, many resources contain more than one type of information and serve more than one function[[18]](#footnote-17).

An understanding of how legal materials are structured and organized (regardless of the media in which they are published) is necessary to effective legal research. Thus, when inspecting and evaluating legal resources, it is important to determine and understand the purposes the resources were designed to serve. An awareness of the functions, features, interrelationships, strengths, and weaknesses of resources, whether they are traditional paper resources or electronic resources, is valuable for effectively conducting legal research. Specifically, it is important for the researcher to know: whether the resource is part of a set or designed to be used with other resources, whether the resource has finding tools or special features such as indexes and tables, whether the text is searchable electronically, whether the resource is up to date, etc. Furthermore, the credibility of the author, editor, or publisher should be considered, together with the types of authority (primary and secondary) included and the potential persuasiveness of the authority. Notably, with the expansion of resources available in the internet, evaluating the resources for accuracy, credibility, and currency is increasingly important.

1. **STEPS/STAGES OF THE RESEARCH**

Generally, legal research encompasses four major steps: Identifying the problem/research question, collecting data, analysing the data, and presenting the answer to research problem through a report. This would also apply when you are researching statutory law; or case law.

The steps involved in conducting legal research are as follows:

1. **Identifying the research problem/question**:This also entails having a draft of the contents of the research.
2. **Collecting materials/data:** you need to collect as many materials as possible and classify them in the order of importance to your work
3. **Reading the materials:** This requires a thorough reading of the materials and keeping a research journal in which you record any relevant information you have found, taking note of the full citation of the materials to avoid plagiarism. This is important because it is easy to get overwhelmed and miss the citation of a material in your paper, and if that happens, you run the risk of deleting that portion for fear of plagiarism. This act may have a serious implication for the entire work because it may affect the flow of the work. By contrast, when you jot down what you have read, it will be easier to trace it when you need to put the citation.
4. **Analysis/Application of law to facts:** Legal analysis is sometimes considered the most important part of the legal research process.Analyzing the law involves applying the relevant legal principles to the issue/s in an effort to achieve a favorable outcome. In carrying out legal analysis, one must compare, contrast, and synthesize relevant cases (distinguishing certain cases from the present facts and applying certain cases as precedents).It is also important to review the ideas relevant to the research and other scholarly works on the subject matter. A research assistant should be able to read and interpret statues, and apply the law (as he understands it), to the facts of the case. Furthermore, he should assist his principal in evaluating and making findings out of the facts of the case and even go further to make honest and confidential recommendations to his principal[[19]](#footnote-18).
5. **Writing the Report :** Your findings at the end of the analysis must cause you to arrive at a conclusion which must be communicated[[20]](#footnote-19). Legal writing is different from other forms of writing. It places heavy reliance on authorities to back up assertions; and the use of specialized words and phrases unique to law such as latin phrases and maxims. It is important for the researcher to have a critical mind when writing. When writing, the *doctrine of the fresh eye* is important because it allows you to look at the work with fresh eyes in order to do away with illogical arguments, grammatical errors, and even latent defects in spelling. Furthermore, when you are writing, do not use only works that support your position. It is beneficial to also use works that contain opposing views. However when you use the latter, endeavor to counter such views in order to have a balanced argument.
6. **CONCLUSION**

Globally, there has been a remarkable upsurge of interest by other disciplines in the study of law, and a push for advancing more emperical/socio-legal research. Although legal research in Nigeria is still limited in scope and its effect[[21]](#footnote-20), the importance of legal research persists, and the system of conducting research is constantly evolving. It is however clear that a robust understanding of current trends in legal research play a vital role in enhancing justice administration particularly in terms of ease of locating materials, speed of conducting research, quality of the research, and ultimately, quality of the judgements pronounced by the courts. Therefore, any researcher who aspires to be proficient must prepare himself through diligence and practice.

I thank you for listening.

1. Oxford University Press; 3rd edition (January 1, 1980). [↑](#footnote-ref-0)
2. See S N Jain, Legal Research and Methodology, 14 *Jr of Ind L Inst* 487 (1972), at 490. [↑](#footnote-ref-1)
3. A.O. Sanni, Introduction to Legal Methods (Ile-Ife: Obafemi Awolowo. University Press Limited, 2006). [↑](#footnote-ref-2)
4. N.1 above. [↑](#footnote-ref-3)
5. Ibid. [↑](#footnote-ref-4)
6. Lecture Notes on Legal Research Methodology and Project Writing (JIL 447) NOUN <https://nou.edu.ng/coursewarecontent/JIL447.pdf>accessed 23 August 2022 [↑](#footnote-ref-5)
7. C.R. Kothari, *Research Methodology: Methods and Techniques* (New Age International Publishers, New Delhi, 2nd ed., 2001, Reprint 2007). [↑](#footnote-ref-6)
8. N.6 [↑](#footnote-ref-7)
9. Ibid,p.215. [↑](#footnote-ref-8)
10. Nowadays, almost all law faculties and other institutions around the world dedicated websites which provide a wide array of resources and other useful services. [↑](#footnote-ref-9)
11. CALR has also immensely helped legal researchers in remaining updated with the latest information in the legal universe, which was impossible without computers equipped with internet and when legal researchers relied only on law reports and journals available in the library. Apart from being pivotal in doctrinal research, computers have also proved superior in processing data collected from empirical legal research and studies. [↑](#footnote-ref-10)
12. eg the Nigerian Institute of Advanced Legal Studies, the National Judicial Institute, and the Nigerian Institute for Legislative Studies have a rich collection of research materials for legal research. [↑](#footnote-ref-11)
13. Niki Tobi, Sources of Nigerian law (MIJ, Lagos,1996). Tobi thus identifies the sources of Nigerian Law as: the Nigerian Constitution; Customary Laws that have been in existence from ancient time; Islamic Law that is universally applicable among Muslims; and Received English Law brought into the country by the British colonialists. Other sources include International Law, Case Law, and Legislation. [↑](#footnote-ref-12)
14. Yusuf Aboki, Introduction to Legal Research Methodology: A Guide for Writing Long Essays, Theses,

	* Dissertation and Articles (Tamaza Printing Co. 2001). [↑](#footnote-ref-13)
15. Ibid. [↑](#footnote-ref-14)
16. Widely used legal encyclopedia are: *Encyclopedia Britannica* (published by Encyclopedia Britannica Inc, London); and *Halsbury’s Statutes of England and Wales* (Butterworths, London), which gives detailed and up-do-date account of statutes and of law on a particular subject. Other useful encyclopedias are: ‘*An Encyclopedia of Definitions and Interpretations of Legally Significant Words and Phrases*’ (published by St Paul, Minn. West Publishing Co, USA), *Words and Phrases* (a multi-volume series, which gives an judicial constructions, definitions of words and phrases by the State and Federal Courts from 1658 to date, is published by St Paul, Minn. West Publishing Co., USA), *International Encyclopedia of Laws* (a loose- leaf service edited by R Blanpain and published in 1999 by Kluwer Law International, The Hague, The Netherlands). Some specialized encyclopedias devoted to a particular area/subject are also available. For example, see *Encyclopedia of Human Rights* (edited by Edward Lawson and published in 1991 by Taylor and Francis, Inc, New York), *Encyclopedia of Crime and Justice* (complied by Sanford H Kadish and published in 1983 by the Free Press, New York). There are also a few acclaimed general encyclopedias that are usable in legal research. [↑](#footnote-ref-15)
17. Secondary sources are also useful when you want to learn how things are generally done, or how they are done in other states. Many national secondary sources give a broad overview of the law, which can vary from place to place. This can be helpful when you’re trying to learn the basics of how the law works, or when you need to compare how different jurisdictions handle the same issue (for instance, while conducting legal research for an academic paper).  [↑](#footnote-ref-16)
18. For example, some electronic resources and looseleaf services include both primary authority and secondary materials; they are, at the same time, designed to be finding tools. [↑](#footnote-ref-17)
19. It should be noted that such suggestions are only advisory as the researcher simply works behind the scene while the whole judicial responsibility is on him (the judicial officer) and not shared with any other person or authority. [↑](#footnote-ref-18)
20. Depending on the context of your research, as research assistants to judges, your findings may be communicated verbally in court, in a written opinion explaining the law on the research issue. Regardless of the context, proper communication of your conclusion requires solid advocacy and writing skills. [↑](#footnote-ref-19)
21. for various reasons such as lack of infrastructure, lack of awareness and interest by institutions in legal research. [↑](#footnote-ref-20)