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Emerging Legal Research Methodological Issues and Opportunities in Developmental Society

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[**Editoral Note:** The numbering of citations within text and the use of footnotes for the cited references and further notes does not conform to this journal's specified referencing style, but is being permitted in this instance as a special concession because the used style is the norm in legal research, the focus is on legal research and the intended audience is legal researchers.]

Abstract
The quest to advance knowledge in legal studies and practice makes legal research imperative for scholars, practitioners and other stakeholders in the justice system of Nigeria and globally. Every discipline has its own lexicon and structure for doing research, and the nature and peculiarities of each discipline in most cases usually determine the format and procedure for carrying it out. Scholars have argued that the discipline and practice of law aim to understand and bring orderliness in human conducts in societies. However, legal research has over time tended towards emphasis on the use of doctrinal research methodology, the hall mark of research in the arts and humanities disciplines, with little or no attention paid to use of non-doctrinal research methods of the social sciences. This study therefore discusses the methodological constraints and opportunities for the diversification of research methods in the law discipline and practice. The discussion highlights that extant laws are becoming increasing incapable of addressing the emerging social issues, hence the imperative to revalidate them continually through legal research, and that because legal issues are also becoming more and more complex, there is need for robust and diverse research methods for understanding them towards improving the laws. It is concluded that there is the urgent need for the use of a battery of methods and techniques in the conduct of legal research so as to obtain research findings that are relevant and appropriate for the emerging human issues, and also scientifically valid and reliable. Combining doctrinal, non-doctrinal, international comparative methods in the conduct of legal research is recommended.

Keywords: Legal research, Emerging Social Issues, Research Methodology, Doctrinal Research, Non-doctrinal Research, International Comparative Research

Introduction
Human beings by nature have an insatiable appetite for gathering and seeking solutions to problem for advancement and development. They do this through many methods which may include, drawing from their own intuitions or experiences, other people's experiences, human institutions, published or unpublished social, technical or scientific research documents, or other means. In particular, research activities form an important and usually dependable source of knowledge discovery, creation and use in modern societies. Research may be defined as any organized systematic enquiry that aims at providing information for solving identified problems. Research work cut across various fields of human activities and academic disciplines. In academic research, the peculiarities of the different disciplines lead to diverse different categories of research, such as natural science research, social science research, medical research, legal research, and many others, with each category developing and evolving over historical time its peculiar paradigms, approaches and research methodologies. The

focus of this paper is on methodological issues, challenges and opportunities of legal research. Worthley[1] stated the following as some of the fundamental rules of research:

- What is wanted is sound, publishable research, not unattainable perfection;
- Research involves honest and dispassionate investigation
- A researcher must at all times have a plan around which he can arrange his material;
- Whilst responsible academic work must be done individually, there are immense advantages in doing it in close touch with a group of scholars in allied topics
- All relevant materials should be noted as read and with full and accurate references;
- Writing should not be deferred until everything has been read
- Not until a case or a document has been read and studied in the original does it become one's own for the purpose of citation
- Legal research should not be confined to books, articles, treaties, statutes and cases but, if necessary, experts should be sought out in the realms of law and related fields of finance, commerce and government for their experience.

Legal research is a systematic enquiry carried out within the discipline of Law. Historically, research on law have been classified as "black-letter law" and "law in context", referring to research that use doctrinal and non-doctrinal research methods, respectively. In reality however, most academic legal researchers utilize doctrinal research methods that involves mainly obtaining, studying and writing about legal documents, such as legal statutes and documents, and previous interpretations and adjudications of legal matters in case law. The preference for doctrinal research methods is due to a number of reasons. Firstly, doctrinal method relies heavily on secondary data arising from already promulgated treaties, charters, regulations, constitutions and other body of laws that have been passed by statutory bodies saddled with such responsibilities. Using this method, the researcher only needs to study such existing laws and identify the gaps in them with a view to recommending how to bridge the gaps, based on the researcher's own and individual perceptions and conclusions. Secondly, it is much easier to gather and analyze such legal documents as they are "in black letter" and possibly in the "context" of specific pending judicial matter, than venturing into society at large to gather empirical data from people in society generally outside of the context of particular judicial matter.

A fundamental limitation of the doctrinal approach however is that critical opinions of and/or findings from samples of people in society on the ways and manner these laws affects them are not considered at all. However, given the rapidly evolving nature of human societies, the provisions of these 'historical' laws and legal documents are usually already overtaken by emerging social events and developments. This necessitates thinking and going outside the box of existing "what is" legal documents, to gather newer information and knowledge through field surveys of the attitudes, perceptions and opinions of the people affected by the laws, including judges, practicing lawyers, law researchers and ordinary people in the streets.

Laws are made to guide people on their conduct in society, and research is needed to add to the knowledge on how the law can be improved to regulate peoples' conducts in the society. It is therefore imperative to investigate peoples' own opinions about the law, by asking such questions as: What do the people (citizens, lawyers, judges, experts in other germane subject non-legal subjects, etc.) know about the law that supports the age-long presupposition that 'ignorance of the law is not an excuse'? What do different socio-economic groups in society think of various provisions of law before a violation of the law occurs? Do citizens consider a particular law to be ethical, fair and adequate in view of emerging social and technological developments? These questions cannot be answered by use of doctrinal methods involving only lawyers researching and arguing for or against contents of existing laws and judicial interpretations, which presumes that the existing laws are either perfect or that legal minds are the only people qualified to hold opinions about laws. Answers to such questions can be found through use of non-doctrinal methods, including social surveys, social experiments and other non-doctrinal research methods.

The scope and aims of a particular legal research should determine the choice of method to adopt, and the appropriateness of the methods employed by the researcher in order to assure the social validity and generalizability of the findings. Given the wide scope of legal research and the complexity of legal issues in contemporary times, the over reliance on doctrinal method of legal

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[1] B.A. Worthley, 'Some Reflections on Legal Research after Thirty Years' *Journal of the Indian Institute*, Vol. 24, No. 2/3 (1982) 175

research is inadequate. Thus, the emerging complex legal issues in the society are seriously challenging the existing methodological paradigm and new lines of thinking are emerging.

This paper therefore provides a rigorous discussion of legal research methodologies of both the doctrinal and non-doctrinal types. The strengths and weaknesses of both methods of legal research are examined, and various types of non-doctrinal methods of research that can be adopted in legal research are described. The paper also considers new trends in legal issues which support the use of international comparative research approaches, and advocates that legal research methods such should be more diverse, robust and result oriented.

Research in general and in legal discipline and profession

Although the term 'research' has received varied definitions and meanings, it is usually motivated by the need to search for reasoned answers to questions such as "what", "how", "why", and "why not". An early 20th century definition by Redman and Mory was that research is a 'systematized effort to gain new knowledge'.[2] Not long afterwards, Slesinger and Stephenson perceived 'research' as 'the manipulation of things, concepts or symbols for the purpose of generalising to extend, correct or verify knowledge, whether that knowledge aids in construction of theory or in the practice of an art'.[3] More recently, Kothari defined 'research' as the systematic method consisting of enunciating a research problem, formulating an hypothesis, collecting facts or data, analysing the facts to reach certain conclusions either in the form of solution(s) towards the concerned problem or certain generalizations for some theoretical formulation.[4] The Webster's New Explorer Encyclopaedic Dictionary defines research as a careful or diligent search, studious inquiry or examination; especially investigation or experimentation aimed at the discovery and interpretation of facts, revision of accepted theories or laws in the light of new facts or practical application of such new or revised theories or laws; the collection of information about a particular subject.[5] From the above definitions, one can deduce that research involves a systematic search or gathering of information for a defined purpose. It is this purpose that determines the type of research and the appropriate methodology.

According to Bulner, methodology denotes the systematic and logical principles of how a research is carried out. It is a means through which knowledge is established and how others can be convinced that such knowledge is correct.[6] The import of this is that a legal research must have a starting point, and follow a process acceptable to the research community. The researcher determines what knowledge to find out by way of research question(s), the general approach or method to use to answer the question(s) and the techniques within that method. A distinction is often also made between research method and research technique. Research method is general and may have several available techniques that can be used within the method, while a technique relates to specific tool that can be used to collect and analyse information to produce the required outcome. Thus, a method could be by way of an experiment, within which different kinds of data collection and analysis techniques may be use single or in combination. Or the method may be document content analysis, using either subjective/objective, one/sample of cases, or qualitative/quantitative analysis techniques. Or the method may be social survey of people, using questionnaire, interviewing or discussion panel techniques. Kothari[7] explains that research methodology is a chosen way to systematically solve the research problem.

Adam Podgorecki[8] defined a research technique as a tool most adequate for sourcing, collecting and analyzing information to answer a stated research question, and that distinction must be drawn between a research strategy (method) and a research technique. Research techniques are concerned with three major tasks in research:[9]

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[2] L. V Redman and A. V.M Mory, *The Romance of Research,* (1923, 10), referred to in C.K Kothari, *Research Methodology Methods and Techniques (Second Revised Edition)* (New Delhi: India New Age International (P) Limited, 2004), 1

[3] D. Slesinger and M Stephenson (Eds.), *The Encyclopaedia of Social Sciences* vol. 1X (Macmillan 1930)

[4] C.K Kothari, *Research Methodology Methods and Techniques (Second Revised Edition)* (New Delhi: India New Age International (P) Limited, 2004), 1-2

[5] Webster's New Explorer Encyclopaedic Dictionary (USA Federal Press, 2006) 1562

[6] Martin Bulner, *Sociological Research Methods: An Introduction,* (London: Macmillan Press Ltd. 1977) 4.

[7] Kothari, '*Research Methodology*' 8

[8] Adam Podgorecki, Law and Society (London: Routledge and Kegan Paul,(1974), 48

[9] O.J. Jejelola, 'Legal Research: An Overview of a Research Proposal' in *European Scientific Journal* Vol.2 September, (2014) 50, 55-56

- Sources of data collection: The researcher need to state whether the sources of his data collection are from primary (collected by the researcher him/herself) or secondary sources (collected previously by others).
- Collection techniques: The researcher is expected to specify what techniques are to be used to collect the primary or secondary data. The collection techniques could involve observing people, events or things, or studying or analyzing the contents of legal documents, newspapers, books, journals, or designing and administering a designed questionnaire or interviews to collect data.
- Data analysis techniques: The researcher is also expected to choose the types of analysis that will be used to analyze the collected data, including how the data or the results from the analyses will be presented in reports on the research.

Critical to a research is a research question, which is the motivation for the research. The research question asks about a specific variable on which, in the context of a legal issue or matter, *valid*, *current* and *adequate* information or knowledge need to be found and evaluated, or cannot be found after painstaking search in legal or non-legal documents, case law, witness testimonies., previous researches, or does not exist. The italicized words are significant: *valid* information is true or factual information (i.e. "*the truth, and nothing but the truth*"); *current* information is that which is also currently true and applicable in law; *adequate* information is information that is complete ("*the whole truth*").

A research question is the initial step to the 'discovery' of the unknown knowledge that the questions asks for or about. The research question is different from a research topic, but asks about a specific aspect (i.e. issue or variable) of what is not known on the topic. One or more research questions may be teased out from a research topic, with each question focusing on only one variable or set of closely related variables of an aspect of the topic. But good research questions are not always easy to conceptualize and specify. Table 1 provide example of a research topic and possible research questions that may be asked on the topic, while the Appendix provides examples of clear actionable versus vague research questions.

Table 1: Example research topic and possible corresponding research questions:

Topic: Status of indigenous land claims in international law. ***Possible Question:*** Has the respect for indigenous people's land rights improved since the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) was passed in 2007? ***Possible Question:*** What has been the effect of the UN Declaration on the Rights of Indigenous People's on land disputes in Brazil, Canada, and the USA.
Source: SOSC 1270 - International Law: Topic to Research Question(s), LibGuides @KNUST Library (The Hong Kong University of Science and Technology Library 2019) Available: https://libguides.ust.hk/sosc1270/topic-question. [Accessed: July 13, 2019]

After the research questions have been properly specified, the researcher will then plan the research methods for collecting information to answer each of them, combining data collection and analysis techniques within each method as considered appropriate. Of course, a research question is not static. It can be modified as the researcher gains more knowledge about the topic through reviews of available information from different documentary and human sources. The researcher will invariably develop the method of gathering information, known as the research methodology. The methodology defines the research paradigm,[10] identifies the literature from which the research question emerges and to which it contributes, defines the methods to be used, as well as the specific techniques to be employed throughout the research.[11] Without the requisite methodology, the research question will not be answered and may be lost in the maze of unnecessary collected information.

[10] A paradigm is a perspective based on a set of assumptions, concepts and values that are held by a community of researchers

[11] Frances K. Stage and Karen Manning, *Research in the College Context: Approaches and Methods* (New York: Brunner-Routledge, 2008) 8

Legal Research Methods

Good legal research should assist in the discovery of new arguments, legal positions on relevant topics or a need for amendment of statute. It can also be useful in clarifying ideas relevant to the study, compare different ideas especially from other jurisdictions and ultimately to advance knowledge in the area of research. Research in the field of law has historically and broadly been classified into "black-letter law" and "law in context", also known as "doctrinal" and "non-doctrinal" research methods,[12] respectively. However, recent developments in law have shown that for any research to be meaningful and meet the global character of law and the modern era, combinations of methods and techniques from the two broad types of research methodologies is often necessary.

Doctrinal Research

Doctrinal legal research is one that asks what the law is in a particular area and at the time of the research. It involves collection and analysis of case laws and relevant legislation (statutory provisions). These provisions are regarded as the primary sources, which are then supported by secondary sources such as journal articles or other written commentaries on the case laws and legislations.[13] The doctrinal research method is theoretical and not empirical. This is because the researcher aims is to describe a body of law and how it applied to previous situations or events. The development of the law over the period may also be analyzed to determine patterns of judicial reasoning on particular provisions of laws. Because this research method cannot be verified in relation to emerging social values, people and institutions, it is said that doctrinal research is theoretical and not empirical.[14] It is said that the doctrinal legal research focuses on black letter laws (i.e. letters of the law).

The doctrinal method begins by taking up a research question with respect to existing statute, and previous judicial interpretations and case law. The researcher will then search for the relevant statutes, judicial pronouncements in cases (case law) and information from other sources such as journals articles, textbooks and digests relevant to answering the research question. Doctrinal research is commonly called the black-letter law. He will read the materials often completely and write out his opinions about the nature and interrelationships of the different information obtained from the materials, as his findings or answers to the question. Thus, doctrinal research aims to find and interpret the law as specified in legal statutes, subordinate legislation and judicial precedents. So, all interpretation, findings and conclusions in doctrinal research are based on the certainty of laws as previously documented. But even then, there can be as many individual subjective interpretations of the documented laws as there are researchers interpreting the law, which often forms the basis of opposing legal arguments based on the same letters of the laws.

The following are some of the doctrinal research techniques:

(a) Observations on the reading of case laws: It is recommended that research in a case will be better done if the case is read at a slow pace and digested. The researcher will therefore be able to determine the *ratio decidendi* of the case and distinguish it from the *obiter dictum*. If one reads fast, it may hinder the appreciation of the fine nuances of the case or a point made between the lines.[15]

(b) Comparing different reports of a case: In view of the numerous law reports in Nigeria today, including electronic law reports, it is advisable to compare such reports as any comparison of *locus classicus* or leading cases on the subject may occasionally explain a specific passage which may be obscure or out of place. In this case, the reporting styles of the editors may be compared.[16]

(c) Reading a case in its historical context: This will assist in determining the mischief the case was meant to address. An instance is the case of *Bronik Motors Limited v. Wema Bank Limited*[17] which is on the jurisdiction of the Federal High Court and State High Court in banking matters; whether exclusive or concurrent. The background to the case and intervening statutes may help to distinguish the case or treat it as obsolete or irrelevant.

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[12] Mike McConville and Wing Hong Chui, 'Introduction and Overview' in *Research Methods for Law* (Edinburgh: Edinburgh University Press, 2007), 1

[13] Ian Dobinsan and Francis Johns, "Qualitative Legal Research" in *Research Methods for Law*,ibid 19

[14] Dobinson and Johns, *Qualitative Legal Research,* 19; See also Gasiokwu, supra, 14

[15] I. A. Ayua, ibid, 2, 3

[16] See for example, reporting styles of the Nigerian Weekly Law Reports, Nigerian Monthly Law Reports, All Nigerian Law Reports, All Federation Weekly Law Report, Law Pavilion Electronic Law Report (LPELR)

[17] (1983) 1 S.C.N.L.R. 296, (1983) 6 S.C. 158

(d) Examining Statutory Laws/Legislations: In research into the statutory law as part of the doctrinal research, it is appropriate to examine the history (historical approach). This will assist to determine the mischief the law was meant to cure. Laws are not made in vacuum. They are meant to fill a need of the society or gap in the law.[18] In the examination of legislation, it is also useful to have a comparative approach in international and comparative legal research. The increasing influences of globalization resulting in treaties between countries makes it important for legal research to refer to materials from other jurisdictions on the subject. It is conceded that they may be persuasive, but it is relevant to a holistic research. According to Martin Gasiokwu,[19] comparative approach can serve three functions: it can throw doubt on the usefulness of entrenched views; it may suggest solution to a legal problem; it tends to aid in assembling the principles, applicable in the fields concerned, which are fundamental or secondary.

Advantages and Limitations of Doctrinal Research

Doctrinal method provides quick answers to the practical problems at hand by analyzing the legal principles, concepts and doctrines. It thereby serves as a quick reference for those that do not have sufficient time for extensive research. A busy legal practitioner will find doctrinal research more attractive. It saves time. Secondly, it gives insight into the evolution and development of the law while highlighting inconsistencies and uncertainties. This will be the basis for further development of the law. Thirdly, by this method of research, the further direction of the law can be predicted.

The doctrinal research method however has had its fair share of criticism especially from social scientists for not responding to socio-economic and political problems of the society. According to Ernest Jones:

> *Much doctrinal research suffers because of the failure of the researcher clearly to distinguish, both in his research design and for the benefit of readers, whether and when he purports to describe past legal behavior, to predict future legal behavior, or to prescribe future legal behavior. It also suffers from an overemphasis upon appellate reports and other conventional legal materials as the sources of the data from which it draws its conclusions. Each of these limitations of doctrinal research are perhaps necessary reflections of what appears to be a more fundamental defect-namely a lack of basic conception of legal research that provokes more meaningful questions about legal order.* [20]

It has also been said that the doctrinal method is highly theoretical, uncritical, conservative, and does not give due considerations to the social, economic and political importance of the legal process.[21]

Non-Doctrinal Research

According to Gasiokwu,[22] non-doctrinal research studies the actual working of the law with emphasis on its relationships with people in society generally and in the context of evolving knowledge contributed by other behavioral sciences. It is not "black-letter law" but focuses on people, social values, social behaviours and social institutions. Non-doctrinal research focuses on data obtained from field surveys of people and institutions which are not available in conventional legal sources such as case laws, books or statutes. The non-doctrinal research seeks to:

- assess the impact of non-legal events such as economic development, growth of knowledge, technological changes upon legal processes;
- identify and appraise the magnitude of the variable factors influencing the outcome of legal decision making, and

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[18] Ibid.

[19] Supra, 20.

[20] Ernest M. Jones, "Some Current Trends in Legal Research" in *Silver Jubilee of the Indian Law Institute Publications Vol.* 7 (1983) 34 (referred to in I.A Ayua, ibid, 5).

[21] Salim Ali, Zuryati Yusoff, Zainal Ayub, 'Legal Research of Doctrinal and Non-Doctrinal' in *International Journal of Trends in Research and Development, Vol.* 3 No. 1 (2017), Assessed: https://kupdf.com/queue/doctrinal-and-non-doctrinal-research_5967b35adc0d608b78a88e77_pdf?queue_id=-

[22] Martin Gasiokwu, *Legal Research and Methodology,* (Enugu, Nigeria: Chengbo Limited 2004) 14, 15.

- trace the consequences of the outcome or legal decision making in terms of value, gains and deprivations for litigants, non-litigants and non-legal institutions.[23]

To achieve these objectives, non-doctrinal research aims to be empirical, relying on data outside the traditional case laws and statutes. According to Ernest Jones,[24] the distinguishing features of non-doctrinal research are that:

a) it lays a different and lesser emphasis upon doctrine;
b) it seeks answers to broader and more numerous questions;
c) it is not anchored exclusively to appellate reports and other traditional legal sources for its data; and
d) it may involve the use of research perspectives, research designs, conceptual frameworks, skills, and training not peculiar to law-trained personnel.

In other words, non-doctrinal research uses a methodology that focuses on the relationship of law with the society and other behavioral sciences.[25] Ernest Jones,[26] explain further that most non-doctrinal research seeks to:

a. assess the impact of non-legal events (e.g. economic developments, growth of knowledge, technological changes) upon legal decision processes;
b. identify and appraise the magnitude of the variable factors influencing the outcomes of legal decision making;
c. trace the consequences of the outcomes of legal decision making in terms of value gains and deprivations for litigants, non-litigants, and non-legal institutions.

Advantages and Challenges of Non-Doctrinal Research

The non-doctrinal approach allows the researcher to conduct research that analyses the law from the perspective of other science disciplines and to employ those disciplines in drafting the law. Secondly, the experimental technique is valuable for detecting and explaining practices and procedures in legal and regulatory systems. It is also valuable in settling disputes and impacts the legal phenomena of social institutions.[27]

Several factors may inhibit non-doctrinal research. The major one is finance. Most interviews or collation of data may not be completed because of lack of funds to reach the greater percentage of persons likely to be affected by an intended regulation. Where experimental technique is proposed, it may not be practical to have a real-life situation or setting. An instance can be found in researching impact of prison sentence on the offender. Getting persons to be put in a prison state may be impractical. Most important challenge is the reluctance of law students to use the non-doctrinal research. The mindset is that law can only be found in case laws and statutes.

Non-Doctrinal Research Techniques

The following are important methods and techniques that can be used in non-doctrinal research.

Historical analysis techniques

In this type of research technique, old private and public records, memoirs, publications are used. This technique is also referred to as documentary analysis. It analyzes "old" documents or data to synthesize "new" ideas. A researcher may seek to explain why a piece of legislation was enacted historically. This would invariably include consideration of the earlier cases and surrounding circumstances on the development of a clear policy of government leading to the enactment of the legislation. All the relevant documents are searched for, collated and subjected to critical intellectual

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[23] Ibid, 14.

[24] Ernest M. Jones, 'Some Current Trends in Legal Research' *Journal of Legal Education* , Vol. 15, No. 2 (1962) 121-138; *Silver Jubilee of the Indian Law Institute Publications*, Vol. 7 (1983)

[25] Martins Gasiokwu, *Legal Research Methodology*, (Enugu, Nigeria: Chengbo Limited 2004) 14,15

[26] Ernest M. Jones, 'Some Current Trends in Legal Research', *Journal of Legal Education*, 15, No. 2 (1962) 121-138

[27] Salim Ali, ZuryatiYusoff, Zainal Ayub, 'Legal Research of Doctrinal and Non-Doctrinal' in *International Journal of Trends in Research and Development, Vol.* 3 No. 1 (2017), Assessed: https://kupdf.com/queue/doctrinal-and-non-doctrinal-research_5967b35adc0d608b78a88e77_pdf?queue, 494

analysis. The advantage of this is that it saves time and costs for data collection through large scale surveys. The researcher is however usually unfamiliar with the circumstances of how the primary documents in focus were created because those circumstances are buried in time. But a meticulous researcher must always endeavor to obtain and analyze other contemporaneous documents to learn about the situational context of the primary documents in focus. Another advantage of this technique is that records remain the same over time irrespective of how many researchers or many times have analyzed them, thereby providing objective immutable physical evidences that can be interrogated repeatedly to support whatever "subjective" researcher-dependent findings and conclusions can be derived from them. This method is really the same as usually used in doctrinal research, where the primary and secondary documents are in the form of legislations, case laws, and commentaries on these over time. The limitation of this technique is that interpretation may be mechanical.

Survey techniques

Survey research method is usually used to find out and describe the characteristics of or phenomena connected with a population of people by observing, asking questions about, or facilitating discussions about the characteristics or phenomena. The whole population may be surveyed to collect data if the population is very small, but usually a representative sample of the population is surveyed. Survey research method is the ideal method of understanding peoples' attitudes, beliefs, views and opinions in different aspects of social life, including laws. Most surveys will provide a detailed description of a population on many variables and look for correlations or associations between them. Surveys may be conducted using questionnaires, interviews, participants or non-participants observation, focused group discussion and other techniques.

Interviews:

An interview is an oral technique of data collection in which a researcher collects information by asking and obtaining answers to questions from respondents orally, with the questions and answers recorded in writing or on tape. The set of questions used is called the interview schedule.[28] There are three types of interviews: scheduled-structured interview; scheduled-unstructured interview; unstructured interview.

Scheduled-Structured Interview: This type of interview is highly standardized. The questions, the wordings, and sequences are predetermined and are the same for all respondents. The advantage of this is that answers from respondents can be compared and necessary deductions made.

Scheduled-Unstructured Interview: The questions asked are also pre-determined in this type of interview, but the number of questions and their wordings are flexible, often left to the discretion of the interviewer. The advantages of the flexibility are that it gives some control over the interview to the interviewee and at the same time allows for the necessary questioning or probing by the interviewer. The questions are designed to cover specific subjects or issues under the subject matter. The interviewer then moves from one issue to another in the pre-determined order. The objective of pre-determination and flexibility are achieved. This type of interview is often used in radio and television interviews as well as Focus-Group Discussions (FGD) where the goal is to obtain rich information about an event or experience experienced or perceived by the interviewees or discussants.

Unstructured Interview: In this type, there is no pre-determined schedule or structure. It is the most flexible type of interview. The direction of the interview is directed by the answers given by the interviewee to earlier questions. To allow the interviewee to answer the questions freely, the interviewer makes use of prompting questions. While an advantage of this type of interview is the flexibility, a major limitation is that the responses may not be comparable with that of other interviewees since the questions are not standardized or uniform.

Generally, interviews have the advantages of being one of the most effective methods for gathering deep and rich information about the respondents' perceptions and opinions. It has flexibility in terms of high rate of control over with who the interview is conducted, where and when, on what issues, order of asking the questions, etc. The researcher can also try to infer the likely authenticity of the information provided by the respondents by observing their body language during the interview. One limitation of interviews though is that the information provided by the respondents may be

[28] Omololu Soyombo, 'Selection of Research instruments, Questionnaire Design and Administration' in *Law and Research Methodology*, (eds). I.A. Ayua .& D. A. Guobadia (Lagos: Nigerian Institute of Advanced Legal Studies,2001)

intentionally biased because of the interviewer's presence or recording of the interview.[29] Also, according to Soyombo,[30] interviews are also often more expensive to complete per respondent than mass administered and completed questionnaires, because use of interviews often necessitates the engagement and training of interviewers, fixing and rescheduling interview times at additional costs. Transportation costs and other incidental expenses may also increase the overall survey cost. Interviews could also be time consuming unlike questionnaires where it may be possible to obtain information from many people simultaneously and very quickly. Thus, interviews are usually conducted with a much smaller sample of people than is possible using questionnaires.

Questionnaires:

In this case, a number of printed pre-determined questions are used for collecting data. The questions may be structured or unstructured, as explained in respect of structured and unstructured interviews above. Where the questions are structured, they may be open-ended or close-ended.[31] The open-ended questions are those in which the response categories are not specified, or which do not limit the response by the interviewee. Open-ended questions are useful when the researcher wants to know the actual feelings or intensity of the respondent's feeling. It is also relevant where the interviewer expects wide variability of responses. The limitation of the open-ended questions is that it may lead to collection of irrelevant answers which may be difficult to analyze. Since the respondents are not standardized, the variability of responses may make comparison between respondents difficult.

Close-ended questions are questions that offer respondents a set of alternative responses which be merely names or labels such as "Male" or "Female", or may be graduated quantities from low to high levels, either precisely with numbers ranging from 1 to 5, or 0 to 10, or imprecisely with sets of alternative short verbal responses such as "Rarely", "Often", "Very often", "Always", or "Strongly agree", "Moderately agree", "Neutral" (meaning between agree and disagree), "Moderately disagree", "Strongly disagree". The main advantages of the close-ended questions are that the specifications of the alternatives answers make the questions easier to answer for respondents, and so questionnaire are often used to collect information from much larger samples of people from a population of people than open-ended questionnaires or interviews. The usually large sample of respondents and the standardization of answers make comparison of answers among respondents easier to do unlike those of open-ended questions.[32] This will invariably save time and money.

The limitations of the close-ended questions are that the provided alternatives are usually not exhaustive of all possible answers, and the fixed set of alternative answers may force the respondent to provide inadequately correct or even completely wrong answers. The respondents are denied the opportunity to answer questions in their own words to convey their peculiar backgrounds, thoughts and emotions. Unlike in interviews, the possibility of biases in the provided answers is much lower because the researcher has no direct contact with the respondents.[33] According to Victor Jupp,[34] reality is much more complex than a few variables that are found in a questionnaire.

The drafted questionnaire may then be given in printed form to individuals personally by hand for completion on the spot or to be collected or sent back later, or administered through phone calls, or as an online survey using the Internet, or by post with request to respondents to send it back to the researcher after filling their responses. Responses to close-ended questionnaires can be easily analyzed with computer software to determine the frequencies with which the various responses are provided by the respondents. The various responses can also be correlated to find out interesting relationships, such as, for example how opinions on higher jail sentences for different types of

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[29] For instance, composure, dressing, language, sex, arrogance may affect the response to the interviewer. See Cannell and Kahn, 'The collection of data by interviewing' in *Research Methods in Behavioural Sciences, (* ed.) Leon Festinger and Daniel Katz (New Delhi: Amerius Publishing Co. 1953) 330-331

[30] Omololu Soyombo, ibid,121,122

[31] Omololu Soyombo , ibid, 103-111. See also (Drafting and Use of Questionnaire as a Research Tool in Legal Research. (2017, Jan 05). Available: https://studymoose.com/drafting-and-use-of-questionnaire-as-a-research-tool-in-legal-research-essay

[32] UrvaReja, Katja LozarManfreda, Valentina Hlebec, VasjaVehorar 'Open-ended vs. Close-ended Questions in Web Questionnaires.' https://www.researchgate.net/profile/Valentina_Hlebec/publication/242672718_Open ended_vs_Close-ended_Questions_in_Web_Questionnaires/links. Accessed: 20/02/2018

[33] Victor Jupp, *The SAGE Dictionary of Social Research Methods* (London: Sage Publications, 2006) 252,253

[34] Ibid, 253

offences differ between male and female respondents in the different age ranges. The responses to open-ended questions, and interviews as well, which are expressed in the respondents' own words can also be analyzed with special software for such verbose data, which counts the frequencies, proximity or association of various words, concepts, ideas expressed by the respondents themselves to provide insight for the researcher. The use of computer software saves the researcher a great deal of time, apart from minimizing the researcher's subjectivity in the analysis of the collected information.

Experimental techniques:

These are useful in the investigation of the actual functioning of law or to determine what effects a proposed legislation may have on people. This is done by testing a hypothesis concerning the interdependence, or possible lack of it, of two or more variables by manipulating one of them to see if it will affect the others.[35] According to Wing Hong Chui, the reason for manipulating variables is to eliminate all possible alternate explanations of the relationship.[36] He gave an example of a study by Natalie Taylor and Jacqueline Joudo on the impact of pre-recorded video and close circuit television testimony by adult sexual assault complainants on jury decision- making.[37] The aim was to investigate whether the mode of testimony (that is, face to face, CCTV or video) and degree of emotionality of testimony (that is, neutral or emotional) have a differential impact on jurors' perceptions of the adult sexual assault complainant and defendant. In this case which had two groups, a total of 210 people were recruited from the public to participate in eighteen mock trials, and they were randomly allocated to one of the three particular modes of victim testimony and two styles of victim presentation. Different groups in the same sample were exposed to the same information and certain controlled conditions, and were tested for differences between each other in the dependent variable (i.e. their perceptions). This technique may however not be practical in real life situation or natural setting.

International Comparative Law techniques

A third type of legal research technique that is gaining global interest is international and comparative legal research. This is because of the increasing role of globalization and international laws, treaties, conventions or municipal laws, as well as conflicts between the laws of different countries and jurisdictions. This type of research crosses traditional jurisdictional boundaries and seeks to compare, harmonize or integrate public and private international law with domestic law. Applying such techniques would enable a researcher identify areas where these international laws and systems can be used to enhance domestic laws.[38] Nevertheless, this paper contends that international comparative legal research is fundamentally an application of doctrinal research method to identify similarities and differences in laws and their application or harmonization across countries and jurisdictions.

Choosing an appropriate methodology

The best methodology for any legal research depends crucially on nature of the research questions to be answered. A study that seeks to answer questions concerning the provisions and actual previous application would need to apply doctrinal research methodology to collate and interrogate the law itself, as well as the relevant case laws. A study that seeks to answer questions about the additional evidences that may support or contradict previous judicial decisions in a litigation would need to assemble and analyze documents and expert opinions beyond those presented in the litigation, A research that seeks out possible competing or better alternatives to current definitions of scope or type of crime in an existing law often needs to look outside a particular law and might need to use

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[35] Martin Gasiokwu, supra, 25

[36] Wing Hong Chui, supra, 58

[37] Natalie Taylor and Jacqueline Joudo, '*The Impact of Pre-recorded Video and Closed Circuit Television Testimony by Adult Sexual Assault Complainant on Jury Decision-making: An Experimental Study*' (Canberra: Australian Institute of Criminology, 2005), Research and Public Policy Series No. 68

[38] See Geoffrey Wilson, "Comparative Legal Scholarship" in *Research Methods in Law,* 87; Mark Van Hoecke, 'Methodology of Comparative Legal Research', www.bjutijdschriften.nl/tijdschrift/lawandmethod/2015/12/RENM-D-14-00001, Assessed: 7/2/2018; Terry Hutchinson, 'The Doctrinal Method: Incorporating Interdisciplinary Methods in Reforming the Law', *Erasmus Law Review* no.3 (2015) 130; Mathias M. Siems, 'The Taxonomy of Interdisciplinary Legal Research: Finding the Way out of the Desert', *Journal of Commonwealth Law and Legal Education* (2009) 5-17, Electronic copy available at http://ssm.com/abstract=1146162

international comparative law techniques. For example, a research may want to find out the nature or scope of terrorism for the purpose of improving an existing law on terrorism.

In this particular example of terrorism, it might be argued, for instance, that "terrorism" is incapable of a precise definition. Hence,, the popular saying that "one man's terrorist may be another man's freedom fighter". Nigeria's Terrorism (Prevention) Act 2011 as amended by the Terrorism (Prevention) (Amendment) Act 2013 avoids the definition of terrorism as a concept but defines 'acts of terrorism' instead, and in as much broad terms as possible to minimize possibilities of any *lacunas*. Section 46 of the Economic and Financial Crimes Commission (EFCC) Act defines terrorism as: "(a) any act which is a violation of the criminal code or the penal code and which may endanger the life, physical integrity or freedom of, or cause serious injury or death to, any person, any number or group of persons or causes or may cause damage to public property, natural resources, environmental or cultural heritage and is calculated or intended to (i) intimidate, put in fear, force, coerce, or induce any government, body, institution, the general public or any segment thereof, to do or abstain from doing any act or to adopt or abandon a particular standpoint, or to act according to certain principles, or (ii) disrupt any public service, the delivery of any essential service to the public or to create public emergency, or (iii) create general insurrection in a state." These defined acts of terrorism means that persons responsible for even a public protest that began peacefully, but hijacked and turned into violent mayhem by opponents or miscreants may be prosecuted under the Terrorism and EFCC Acts.

Thus, given the evolving possible scope of terrorism acts in modern digital societies, it may be difficult to achieve the aim of the research on terrorism adequately using only doctrinal research methodologies. Non-doctrinal research methodologies would often also be needed to collect information and data from people in society, as well as economic, political and socio-political developments within and outside the particular society, which are not available in conventional legal sources such as existing legislation, case laws, books or statutes.

Conclusion

Like in other forms of research, finding and conclusions of legal research is very sensitive to the methods employed to investigate the issues of interest. Therefore, attention should be given to the nature of an issue being studied, the purpose for the research, the kind of data required to meet the purpose, and the expected findings, possible applications of the findings, etc. Otherwise, topical issues and germane problems may be messed up by the use of inappropriate method and techniques. Legal researchers tend to prefer the doctrinal method over non-doctrinal method because of its simplicity based, as it is often the case, on the content analysis and synthesis of information extracted or interpreted from accessible legal documents in the comfort of a legal library or office to support particular legal perspectives or arguments.

Nevertheless, the position of this paper is that the non-doctrinal method of legal research, though more complex to implement, should be used alongside the doctrinal method in other to obtain findings and recommendations that can be used to improve the social relevance of the provisions, substance and practice of law. As the data and findings obtained through the doctrinal research method could have been over taken by events outside courtrooms in the course of time, the use of the non-doctrinal techniques give room for discovery of more current data and findings from people outside the legal system. Furthermore, the use of non-doctrinal method could provide a basis for comparisons of the law with its actual applications and its social impact as it investigates laws in the context of the attitudes, perceptions, opinions and behaviours of the people relative to the law. Findings from such research could suggest need for review of provisions of the law or its outright abrogation. The use of a mix of methods and research techniques would then likely provide better results in legal research than sticking to the doctrinal methodology alone because of its simplicity.[39] The International Network to Promote the Rule of Law (INPROL) has also published a comprehensive practitioner's guide to

[39] For more comprehensive treatment of doctrinal and non-doctrinal research methodologies and techniques, see: Murtala Ganiyu Murgan 'A Critical Analysis of the Techniques for Data Gathering in Legal Research' Journal of Social Sciences and Humanities Vol. 1, No. 3, 2015, pp. 266-274, Available: http://www.aiscience.org/journal/jssh; Riyan S., Writing An empirical Legal Study Design (Printer,Yake Law School, Lillian Goldsman's Law Library, Yake, 2014); Hunchinson T. Researching And Writing in Law.(Austria Lawco, 2010);.Kothari C.R. Research Methodology and Techniques, 2nd Revised Edition (New Delhi, New Age International Limited, 2004); Hutchinson T. Researching and Writing in Law, (2nd ed,) (Sydney: Law Book Co., 2006).

Qualitative and Quantitative Approaches to Rule of Law Research.[40] The Utrecht Law Review recently provided an illuminating discourse on the on-going debates on the challenges and opportunities of the various paradigms, methodologies and legal research.[41]

Finally, this paper also took notice of an unfolding method of legal research known as international and comparative legal research. This line of research looks at legal issues that transcend geographical borders of two or more nations, especially concerning bilateral and multilateral laws, treaties and conventions. Such research does not only look at what is, but also compare it with what ought to be, and why there are differences or discrepancies in laws across countries or jurisprudences. Such research also seeks to integrate multidisciplinary techniques and research approaches to addressing legal issues in the international arena.

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[40] Kristina Simion, Qualitative and Quantitative Approaches to Rule of Law Research: Practitioner's Guide (INPROL -International Network to Promote the Rule of Law, July 2016)

[41] Philip Langbroek, Kees van den Bos, Marc Simon Thomas, Michael Milo, Wibo van Rossum, 'Methodology of Legal Research: Challenges and Opportunities' (Editorial) Utrecht Law Review. Vol. 13 Issue 3 (2017), http://doi.org/10.18352/ulr.411 [utrechtlawreview.org]

Appendix

Examples of clear actionable versus vague research questions.

Source: https://www.scribbr.com/research-process/research-question-examples/
[Note: Only the first pair of question is relevant to legal research]

Research question	Explanation
• *How can drunk driving be prevented?* • *What effect do different legal approaches have on the number of people who drive after drinking in European countries?*	The first question asks for a ready-made solution, and is not focused or researchable. The second question is a clearer comparative question, but note that it may not be practically feasible. For a smaller research project or thesis, it could be narrowed down further to focus on the effectiveness of drunk driving laws in just one or two countries.
• *Why is there a housing crisis in the Netherlands?* • *What impact have university internationalisation policies had on the availability and affordability of housing in the Netherlands?*	Starting with "why" often means that your question is not focused enough: there are too many possible answers and no clear starting point for research. By targeting just one aspect of the problem and using more specific terms, the second question offers a clear path to finding an answer.
• *What should political parties do about low voter turnout in region X?* • *What are the most effective communication strategies for increasing voter turnout among under-30s in region X?*	It is generally not feasible for academic research to answer broad questions about "what should be done". The second question is more specific, and aims to gain an understanding of possible solutions in order to make informed recommendations.
• *What factors led to women gaining the right to vote in the UK in 1918?* • *How did Irish women perceive and relate to the British women's suffrage movement?*	The first question is too broad and not very original. It has been extensively researched by historians, and it would be very difficult to contribute new knowledge. The second question identifies an underexplored aspect of the topic that requires investigation and discussion of various primary and secondary sources to answer.
• *How can sexual health services and LGBT support services in district X be improved?* • *How can sexual health clinics in district X develop their services and communications to be more LGBT-inclusive?*	The first question is not focused enough: it tries to address two different practical problems (the quality of sexual health services and LGBT support services). Even though the two issues are related, it's not clear how the research will bring them together. The second integrates the two problems into one focused, specific question.