

Legal Research and Interpretation Methodology

Lecture Title: What is Legal Research?

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Diploma in Law (Malta)



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Legal Research and Interpretation Methodology

- 7 sessions
- Assessment method - two assignments
- Practical & theory based questions



What is research?



What is Research?

- Multiple definitions
- Concise Oxford Dictionary - The prefix in the word research “RE” means repeated, frequent or intensive. Meaning that research is continuous
- Webster’s International Dictionary:

Research is a careful, critical inquiry or explanation in seeking facts or principles. It is a diligent investigation to ascertain something

- Collins Dictionary definition:

Research is work that involves studying something and trying to discover facts about it

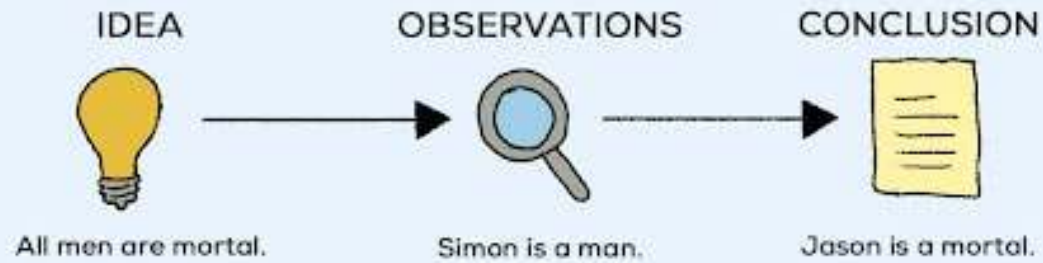
- American Sociologist Earl Robert Babbie:

“Research is a systematic inquiry to describe, explain, predict, and control the observed phenomenon. It involves inductive and deductive methods”.

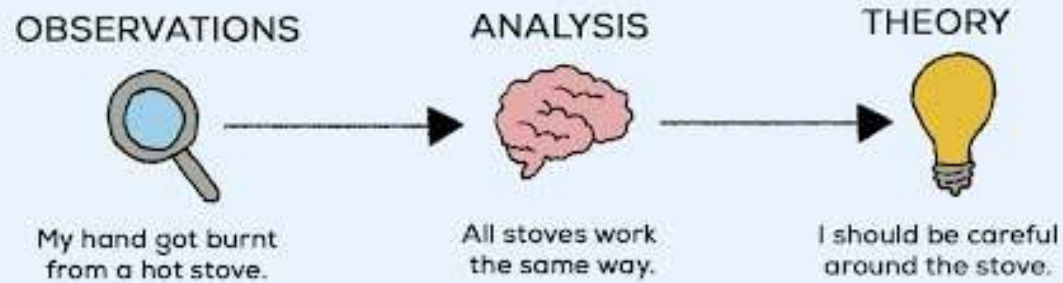
- Inductive – 1st observe, 2nd Analyse, 3rd come out with theory
Deductive – 1st idea, 2nd Observe, 3rd Conclusion



DEDUCTION



INDUCTION



What is Research?

- Not all research is research
- Aimless, unrecorded, unchecked research which cannot lead to valid conclusions is not research.
- Valid research is systematic (well planned/ organized) meaning it involves the selecting, collection and managing of the best available evidence/facts for research, according to a defined, planned and consistent method.



What are the characteristics of research?

1. Good research follows a systematic approach to capture accurate data. Researchers need to practice ethics and a code of conduct while making observations or drawing conclusions;
2. The analysis is based on logical reasoning;
3. Real-time data and knowledge is derived from actual observations in natural settings;
4. There is an in-depth analysis of all data collected so that there are no anomalies associated with it;
5. It creates a path for generating new questions. Existing data helps create more research opportunities;
6. It is analytical (critical thinking) and uses all the available data so that there is no ambiguity in inference;
7. Accuracy is one of the most critical aspects of research. The information must be accurate and correct. For example, laboratories provide a controlled environment to collect data. Accuracy is measured in the instruments used, the calibrations of instruments or tools, and the experiment's final result.



When & how can this applied to legal research?



Why is research important?

- It's a tool for building knowledge and facilitating learning about a phenomenon, situation, or behaviour under study
- To test existing theories and to develop new theories on the basis of existing ones;
- To answer different questions of “how”, “what”, “which”, “when” and “why” about a phenomenon, behaviour, or situation;
- It allows us to disprove lies and support truths
- It contributes to existing knowledge e.g. historical events are continuously revised and reviewed on the basis of research





What is methodology?

What is Methodology?

- Methodology is the beginning of research
- It is the technique/ strategy on how to conduct research
- Applied at the initial stage
- It is the approach to be used for writing research papers
- Research methods are only a small portion of research methodology. Methodology includes the processes, the methods refer to the actual steps you take throughout your research to collect and analyze data. The methodology serves as a summary that demonstrates the validity and reliability of your methods, while the methods you detail in this section of your paper are the scientific approaches to test and make conclusions about the data you study.
- It is a study comprising of not only research methods but also an explanation and justification for using certain research methods and of the methods themselves i.e. their application in a given situation and validity for the research problem at hand
- Format - methodology usually appears at the beginning of your project and looks like a summary or essay in paragraph form detailing your research validity, process and rationale.
- The content within your entire methodology focuses on delivering a concise summary of your research, approaches and outcomes. Therefore, the content of your methodology includes all aspects of performing your studies.
- Concise: It is a set of rules of procedure about the way to conduct research
- It covers also relevancy and efficiency of the research methods, the logic behind



What is Methodology?

- C R Kothari definition:-

The scope of research methodology is wider than that of the 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 the 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 has been collected and what particular method has been adopted, why a particular technique of analyzing 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





Why is methodology useful?

Advantages of research methodology

- Helps the researcher to formulate his research problem in an intelligent manner
- Instills objectivity in the research problem and in the seeking of the solution
- Research is conducted in an efficient manner
- Enables to take rational decisions at given research stages
- Enhances ability to analyze and interpret data with objectivity
- Leads to good and confident research



Methodology Example

- *This research paper explains the psychological and emotional effects of a support program for employees with mental illness. The program involved extended and individualized support for employment candidates through a job support agency that maintained contact with candidates after initial job placement to offer support in various ways. I used a 50% random sampling of individuals who took part in the support program through the job support agency between April and October, and who fit the study criteria I developed from previous and similar studies*
- *My team and I randomly assigned the resulting 350 cases to either the treatment group or the control group, which comprised life skills development and employment training within an in-house workshop environment. My team and I measured all 350 participants upon intake and again at the 90-day threshold of employment. The psychological functioning and self-esteem measurements we used provided significant data on the effects of treatment within both measures, including opposing outcomes that differed from our initial hypothesis.*
- *We found through our research that instead of improved function and higher self-esteem, the individuals within the treatment group displayed lower levels of cognitive and emotional function and lower self-esteem. These results led my research team and I to conclude that individuals who work in roles they find unfulfilling often experience significant decreases in performance due to higher job stress and diminished emotional wellbeing, regardless of their mental health conditions.*



What are research methods?

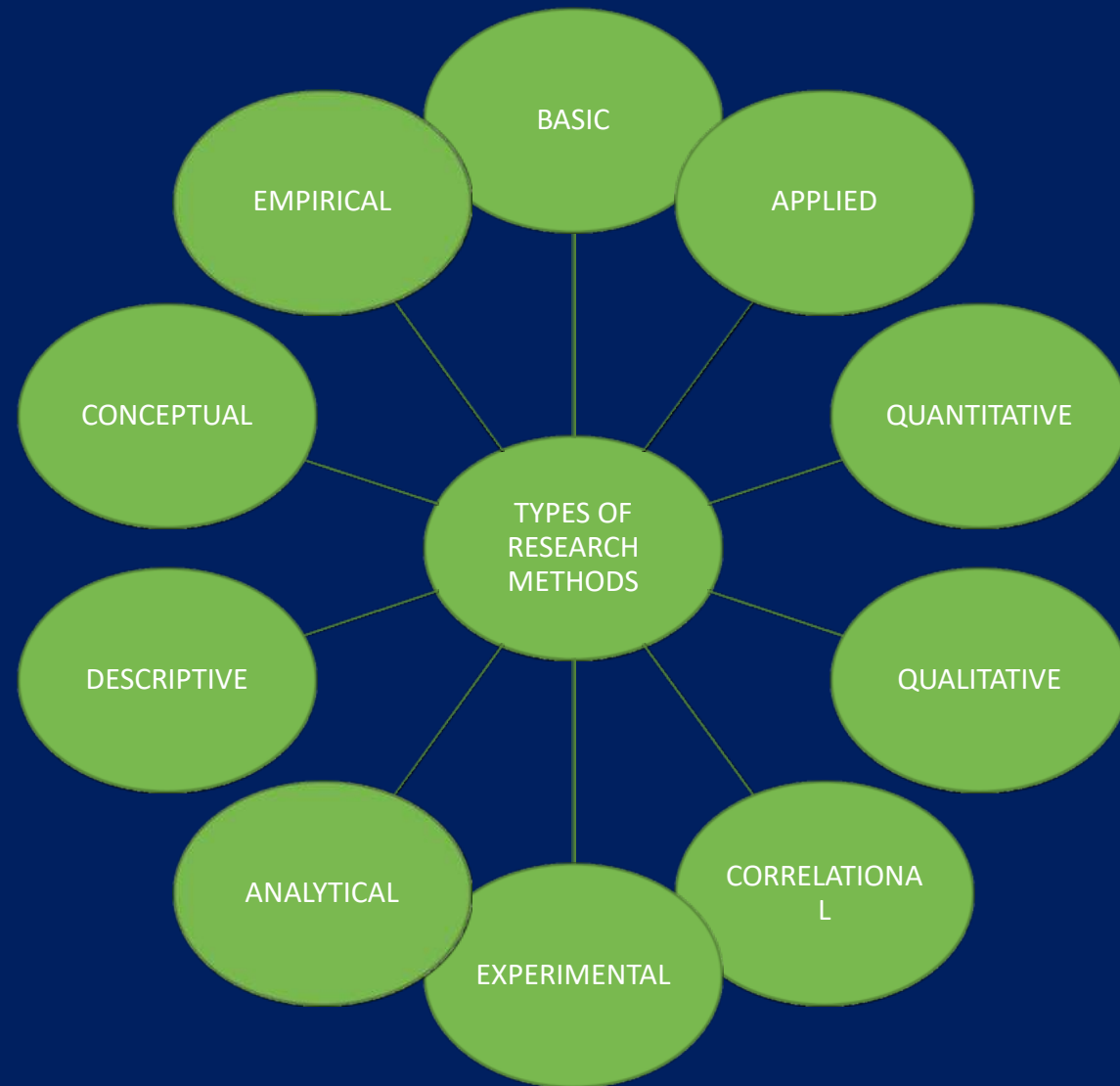


What are Research Methods?

- Research methods are the actual methods/ techniques/ tools to be used in conducting the search and collecting data
- It is the process used for collecting information
- Different methods can be selected e.g. experimental
- Research methodology is the beginning. Research methods are applied at a later stage



Types of Research Methods – No hard and fast rule



Types of Research Methods

- Descriptive vs Analytical
- Basic/ Fundamental vs Applied
 - Qualitative vs Quantitative
- Correlational vs Experimental
 - Empirical vs Conceptual



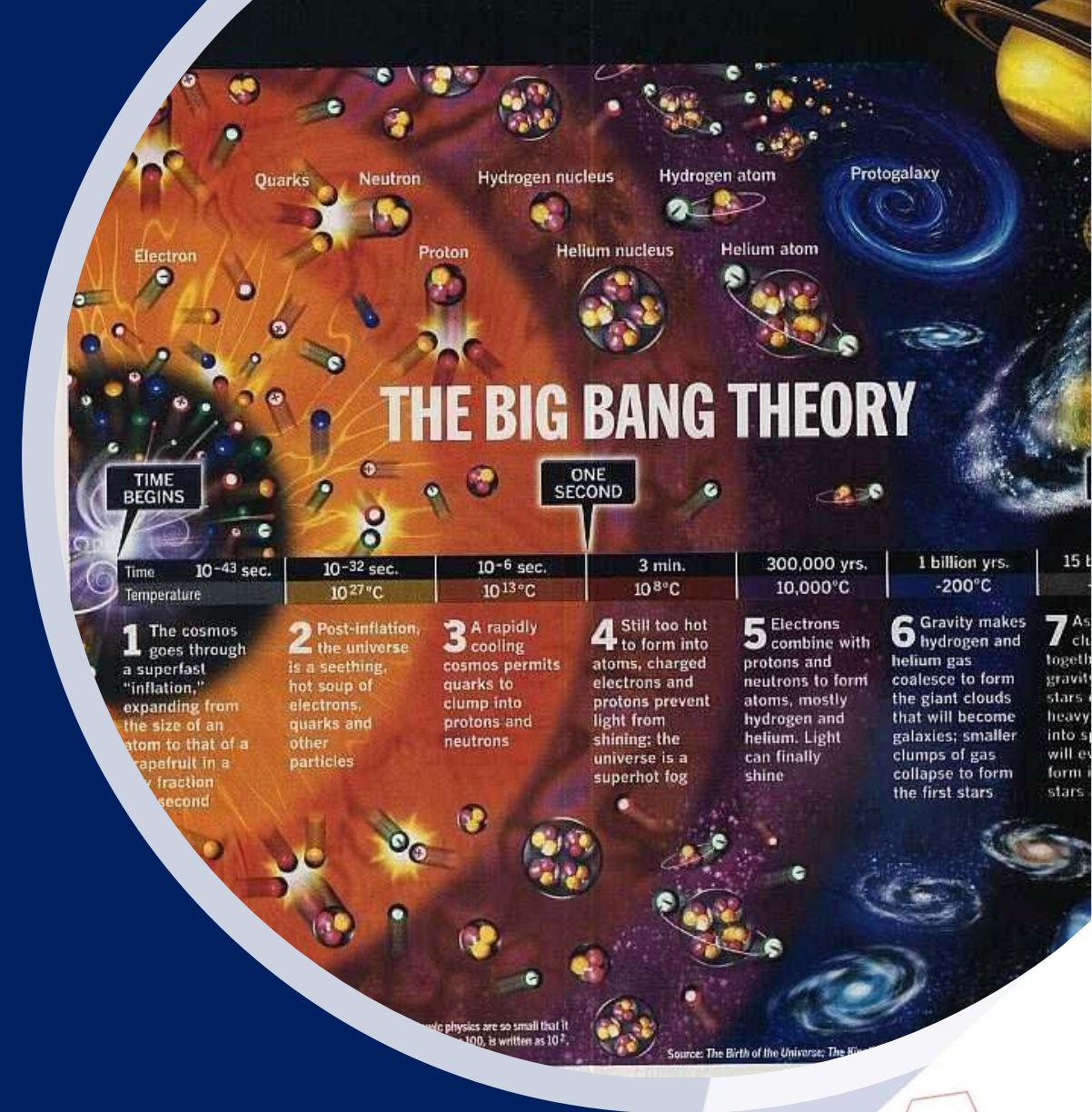
Types of Research Methods – Basic

- *Pure/Basic Research Method*
 - The foundation of research
 - Most basic and fundamental examination
 - Primary aim is to gain a better understanding of a subject or extend information
 - Generic



Types of Research Methods – Basic

- *Q: How did the Universe begin?*
- *Q: What are the symptoms of Covid-19?*



Types of Research Methods – Applied

- Basic research is the foundation of applied research
- Applied research is designed to answer specific questions aimed at solving the problem in question



Types of Research Methods – Applied

- Basic: What is Cholesterol?
- Applied: How to reduce cholesterol?

My doctor told me to watch my cholesterol. So now I stare at my French fries for a few seconds before I eat them.

maxine.com



Types of Research Methods - Descriptive

- Describes the current state of affairs
- Reports what has happened or what is happening
- It does not delve into the causes of the situation
- Evokes a particular person, place or thing
- Recounts what happened
- only explains a theory and gives no opinion

E.g. How much/ how many/ how regularly/ what percentage/ what time? Census



Types of Research Methods – Analytical/ Critical

- Use already available facts/ information available, analyze and provide a critical evaluation of the facts
 - evaluates strengths and weaknesses
 - makes reasoned judgments
 - draws conclusions
-
- Ideal for legal writing



Descriptive Writing	Analytical writing
States what happened (the event).	Explain what the impact of the event was (especially in relation to the research question/s).
Explains what a theory says.	Explains how this is relevant to the key issue(s) and research question(s).
Notes the methods used.	Explains whether these methods were relevant or not.
States what time/date something happened.	Explains why the timing is important/relevant.
Explains how something works.	Explains whether and why this is positive or negative.
Provides various pieces of information.	Draws a conclusion in relation to the various pieces of information.



Descriptive Writing vs Critical Analytical Writing In Research: How To Write Critically + Examples

- <https://www.youtube.com/watch?v=bGBBJBaWqEI>



Descriptive or Analytical/ Critical?

Text A

According to the trait theory of leadership, some people are better suited to leadership because they are born with particular qualities and characteristics. This theory is likely to have stemmed from the work of Galton (1869) who argued that the qualities necessary for effective leadership are naturally endowed, and therefore only passed on through genetics. This idea was popular until the 1950s when it was thought to be too limited in its explanation of what makes a good leader (Zaccaro, 2007). The theory regained popularity in the 1980s, after new research highlighted the importance of personality traits in successful leadership. A five-factor model of personality has been developed to outline what these favourable personality traits are. They include: neuroticism, extraversion, openness to experience, agreeableness, and conscientiousness (Digman, 1990). The degree to which these five factors are present in an individual can be used to predict whether someone will emerge to be a leader, and how effective their leadership will be (Judge et al., 2002).

Text B

The trait theory of leadership indicates that some people are better suited to leadership because they are born with particular personality traits. Although it is unlikely that genetic factors alone influence leadership ability, this theory is nonetheless a useful tool for predicting whether someone will emerge to be a leader, and how effective their leadership will be (Judge et al., 2002). A five-factor model of personality has been developed to outline what these favourable personality traits are. They include: neuroticism, extraversion, openness to experience, agreeableness, and conscientiousness (Digman, 1990). While application of the theory is useful for assessing the relationship between personality and leadership, it does have limitations. Firstly, to determine the degree to which these traits are present to an individual, a self-evaluation of personality is carried out. To make the assessment more objective, observer ratings should also be included (Colbert et al., 2012). The main limitation, however, is that trait theory does not consider the extent to which developing and honing one's natural abilities make a person a good leader. Innate personality characteristics are undoubtedly necessary for successful leadership, as trait theory suggests, but a leader must be able to take advantage of and develop their natural traits.



Types of Research Methods – Quantitative

- Quantitative research is the process of collecting and analyzing numerical data
- It deals in numbers, logic, and unchanging data
- Eliminates bias
- Narrow Questions
- Used for surveys and statistics
- Objectivity



Types of Research Methods – Qualitative

- Qualitative research involves collecting and analyzing non-numerical data (e.g., text, video, or audio) to understand concepts, opinions, or experiences.
- It can be used to gather in-depth insights into a problem or generate new ideas for research
- It includes interviews, case studies, narrative research
- Generic questions
- Subjectivity / biased



Quantitative Methods



Qualitative Methods



Applied Qualitative vs Quantitative

- French Café:
- <https://www.youtube.com/watch?v=RYmLE8UqCXU>



Types of Research Methods – Correlational

- The study of the relationship between variables
- It involves making connections between variables and looking at statistical patterns
- Used to determine the level of association between variables
- No manipulation of variables – Just look at the data that already exists
- 3 types of correlational research:
 - i. Observation
 - ii. Archival Research
 - iii. Survey

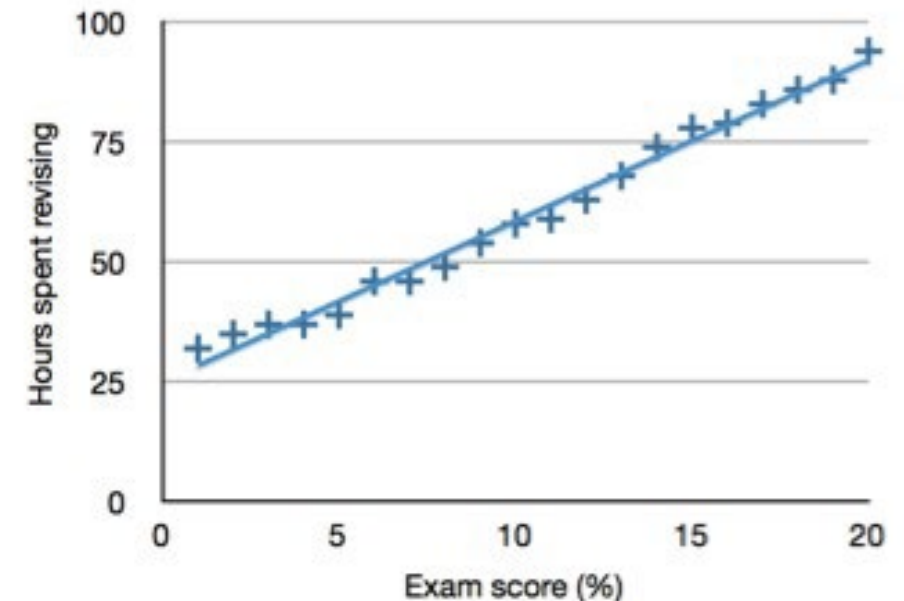
E.g. The more time you spend running on a treadmill, the more calories you will burn



Types of Research Methods – Correlational

Examples of Correlations

- Students who spend more time studying tend to earn higher grades.
- People who get less sleep tend to have more body mass.
- People with low self esteem are more likely to suffer from depression
- In major US cities, when ice cream consumption increases, crime rates increase



Types of Research Methods – Experimental

- A method that tests a hypothesis using controls and manipulations of variables
- Experiment with variables
- Cause and effect
- *E.g. In order to test the effects of a new drug intended to treat a certain medical condition like dementia, if a sample of dementia patients is randomly divided into three groups, with the first group receiving a high dosage of the drug, the second group receiving a low dosage, and the third group receives a placebo such as a sugar pill (control group), then the first two groups are experimental groups and the third group is a control group. After administering the drug for a period of time, if the condition of the experimental group subjects improved significantly more than the control group subjects, we can say that the drug is effective. We can also compare the conditions of the high and low dosage experimental groups to determine if the high dose is more effective than the low dose.*



Types of Research Methods – Experimental

- Car noise example
- <https://www.youtube.com/watch?v=qtLnBz6lbRQ&t=86s>



Types of Research Methods – Conceptual

- Is research that relates to abstract concepts and ideas. It doesn't involve practical experimentation but instead relies on the researcher analyzing available information on a given topic.
- Example: Sir Isaac Newton observed his surroundings to conceptualize and develop theories about gravity



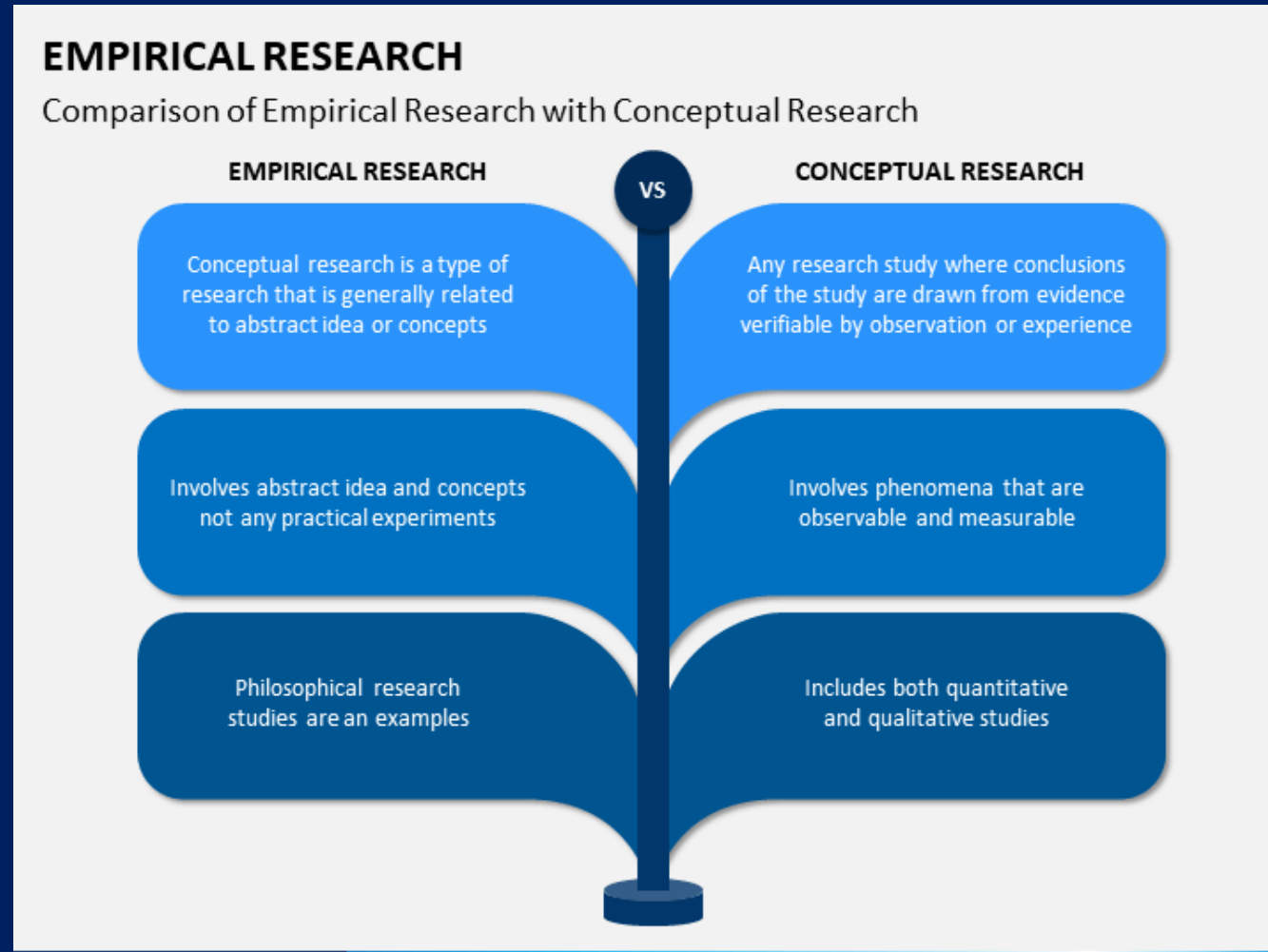
Types of Research Methods – Empirical

- Empirical research is based on experience
- Data based with conclusions that can be verified or experimented
- It involves observation, induction (start from specific point and then draw a conclusion) / deduction (assumption and then arrive to a conclusion), testing and evaluation

- E.g. The growth of a plant is measured daily over the year.



Types of Research Methods – Empirical vs Conceptual



What is legal research?



What is Legal Research?

- S.N. Jain, Legal Research and Methodology definition:-

Legal research can be understood as a systematic finding or ascertainment of law on an identified topic or in a given area as well as an inquiry into law with a view of making advancement in the science of law

- Blacks Law Dictionary definition:-

The finding and assembling of authorities that bear on a question of law

- It entails the finding of particular laws in a cast mass of statutes which are constantly amended, introduced and repealed to the facts of your case. It also involves the finding of legal principles which do not emanate from law but emanate from out sources e.g. judgments



What is Legal Research? – Maltese Legislation

- More than 600 Acts
- Numerous Subsidiary legislation
- Legal Notices
- Bye-Laws
- Case law – precedent principle is not applied in Malta

e.g. Unconstitutionality of the law regulating agricultural leases – old rent laws (Cap. 199) restrict owner's enjoyment of the land - J & C Properties Limited (C29114) vs Nazzareno Pulis u Antonia Pulis, u l-Avukat Generali, illum l-Avukat tal-Istat (Rik Nru 133/18 JZM) confirmed by the COA 23/11/2020; VS

Il-Perit Paul Camilleri (K.I. nru. 24555(M)) u martu l-Avukatessa Dottor Fiorella de Marco (K.I. nru. 381059(M)) vs. Mario Gauci (K.I. nru. 613654(M)) u martu Philomena Gauci née Galea (K.I. nru. 575855(M)) u L-Avukat tal-Istat – P.A. (Kost.) 16/09/2022 breach is justified when considering “l-għan principali tal-liġi li qabel xejn għandha tithares l-attività agrikola li tkun qegħda titwettaq fir-raba”



What is Legal Research?

- S.N Jain, Legal Research and Methodology

Research may be defined as systematic fact finding (i.e to find what the law is on a particular point) and advancement of the science of law. In a strict sense, legal research is understood as limited to those works which contribute to the advancement of legal science (i.e. excluding such materials as text books and case books etc). This is a too narrow a view of research and we need not adopt such a restricted definition of legal research. Even the fact finding is not as easy as it may seem. First, a researcher has to go into the different statutory provisions and the rules made thereunder. Secondly, he may have to examine the mass of case-law which may have accumulated on the point in issue, and it is not an easy matter to derive a clear-cut legal proposition from the tangled mass of case-law.

To advance the science of law, it is necessary for a researcher to go into the underlying principles or reasons of the law. The enquiries will have to be: Why a particular rule? What led to its adoption? What are its effects? Whether it is suited to the present conditions? How can it be improved? Whether it needs to be replaced entirely by a new rule?



Purpose of Legal Research

- Law does not exist in a vacuum. It reflects the attitudes and behavioral norms at a given time. Since laws are enacted based on the current social contexts they are subject to change.
- Legal research becomes essential for ascertainment of law, to point out ambiguities and weaknesses of law, to critically examine the laws in order to ensure coherence, consistency and stability of law and its underlying policy, to conduct a social audit of the law, and to suggest reforms in the law



Purpose of Legal Research – Introductions and Reforms



- Article 338(s) Chapter 9 (enacted in 1856 and amended in 1905. Still enforceable):
 - *Drives animals (whether of burden or riding animals) over a drawbridge, with or without a vehicle, otherwise than at an amble*
 - *Isuq bhejjem (tat-tagħbija jew tar-rkib) fuq pontijiet li jintrefgħu, bil-vettura jew mingħajrha, xort'oħra milli bil-pass*

Purpose of Legal Research – Introductions and Reforms – Example II



- Article 339(1)(a) Chapter 9 (enacted in 1856. Still enforceable):

(1) Every person is guilty of a contravention against the person who - (a) challenges another to fight with stones

Huwa ħati ta' kontravvenzjoni kontra l-persuna, kull min-

- *(a) jistieden għall-ġlied bil-ġebel;*

Purpose of Legal Research – Introductions and Reforms

- *DECRIMINALIZATION OF SLANDEROUS WORDS WRITTEN ON SOCIAL MEDIA (False/ Malicious Allegations)*
- In 2015 Magistrate Joseph Mifsud appealed to Parliament to decriminalise defamation, noting the contradictory situation in Malta which embraced freedom of expression but also punished certain instances where views were aired publicly.
- “defamation” is the communication of a statement that seriously harms the reputation of a person and includes libel and slander
- March 2017 – Minister for Justice Dr Owen Bonnici proposed a bill of newly-amended laws that regulate media and defamation, stating that ‘journalists have [now] been given new liberties’. Amendments aimed to protect journalists are applicable also to all those persons who broadcast information through various media sources
- May 2018 – decriminalisation of offence meaning that slanderous words written on social media do not attract criminal liability (contrary to civil – in civil sphere the garnishee order was removed).
- *DECRIMINALIZATION OF CANNABIS*
- 2018 - Decriminalization of medical cannabis in Malta
- December 2021 – Legalization and decriminalization of recreational cannabis for personal use







Purpose of Legal Research – Ascertaining the Law



- Locating the law
- In a complex mass of legal statutes coupled with allied legal material it is not always easy to find the law on a particular point.
- Judicial pronouncements/judgments add to the complexity. Judgments are accessible on <https://ecourts.gov.mt/onlineservices>
- In Malta laws can be downloaded from: <https://legislation.mt/>
- Maltese law has more than 600 Acts under which subsidiary legislations are also enacted. Laws take also the form of legal notices, and bye-laws.
- Amendments, date of applicability of the law, date of repeals




LEĠIŻLAZZJONI MALTA


Tfittxija avvanzata FAQs Ikkuntattjana eCourts  

 Ligijiet konsolidati Pubblikazzjonijiet ▾ Ligijiet tal-UE 


L-AHĦAR AĠĠORNAMENTI 

- Regolamenti dwar l-Araldika u l-Ġenealoġija
- Ordni dwar iċ-Ċertifikat tat-Tilqima kontra l-COVID-19
- Regolamenti dwar l-Gheluq ta' Stabbilimenti tal-Ikel u x-Xorb
- Regolamenti dwar l-Użu Mandatorju ta' Maskri Medici jew tad-Drapp
- Regolamenti dwar il-Bżonn ta' Ċertifikat Validu ta' Tilqima Rikonoxxuta kontra l-COVID-19


FAQs 

- X'tip ta' legiżlazzjoni issib f'din il-website?
- Nista' insib legiżlazzjoni ġdida fuq il-website?
- Kemm huwa aġġornat il-kontenut konsolidat ta' din il-website?
- Uri iktar...

Kapitoli tal-Ligijiet ta' Malta



Pubblikazzjonijiet Legali



Fittex fid-dokumenti kollha



Ligijiet tal-UE





Illoggja

[Illoggja billi tuża l-e-ID](#)

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Il-Professjonisti Legali li għandhom id-dettalji tagħhom fis-sistema tal-qorti ingħataw access awtomatiku għall-eCourts. Huma għandhom access aktar wiesgħa u għandhom is-servizzi indikati hawn taht. Kull m'għandhom jagħmlu hu li jilloggjaw permezz tal-eID.

Dawk il-Professjonisti Legali li meta jilloggjaw permezz tal-eID isibu li għandhom access limitat peress li ma jkollhomx id-dettalji tagħhom fis-sistema tal-qorti, għandhom jibgħatu email fuq ecourtsaccess.csa@courtservices.mt u jibgħatu d-dettalji personali tagħhom (isem u kunjom, numru tal-karta tal-identita' u numru tal-mobile) kopja tal-warrant scanned biex jingħataw access aktar wiesgħa għas-servizzi online.

Links

- [Kawzi Ċivili](#)
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- [Tribunal għal Talbiet Żgħar - Risposta għall-kontrotalba](#)
- [Rikors Elettorali Ai Termini Tal-Art 39/40 tal-Kap 354](#)
- [Proċedura Ewropea għal Talbiet Żgħar](#)

Purpose of Legal Research – Highlighting Ambiguities and gaps

- A law is not designed to address every problem that might arise
- Usually laws address problems being faced in the present and not in the future
- With the passage of time ambiguities/ lacunas may arise which require amendments and clarifications e.g. Rent laws in Malta
- Ambiguities in the law– general rule – Maltese text applies but may refer to English text which may provide better clarification



Purpose of Legal Research – Determine coherence, stability and consistency

- The process of critical evaluation of the law/judgments helps in future designing and development of law, legal provisions or doctrines, as the case may be.
- E.g. Concept of damages in Malta – Art. 1045 of Cap. 16 – Our law providing for the compensation of damages was lacking & inferior when compared to other 'progressive' jurisdictions. Introduction of new concepts - *Lucrum cessans* (loss of future earnings) and *damnum emergens* (actual losses). Application of principles in *Michael Butler v. Peter Christopher Heard* (1967):

Lucrum Cessans x Multiplier x disability % = Damages to be awarded less lump sum %

Should the law be amended today to incorporate moral damages across the board?



Purpose of Legal Research – Social auditing of the law

- It enables one to know the stakes the law intends to protect or change and reasons for the same. Such an audit helps to identify gaps, if any, between the legal ideal and the social reality. It also enables us to predict the future of law.

Questions asked for social auditing:-

- What corrective measures need to take place to make it more effective?
- Why did the law become dysfunctional?
- Does it merely need modifications or replacement by a new statute?



Purpose of Legal Research – Social auditing of the law



- Chapter 69, The Reletting of Urban Property (Regulation) Ordinance
- Pre-1995 rent laws
- Landlords whose property had been rented out prior to June 1, 1995 had no right to refuse renewal of the lease and could not raise rents. Rent did not reflect market rates. Aim: Social housing measures. Should it still be applicable today?
- Who is being mostly prejudiced: Lessors vs Lessees
- Amendments introduced in 2019 and 2021
- Proceedings before RRB to subject lessee to the means test. If he qualifies, rent is increased to a max. of 2% of the property market value. If not lessee is evicted within 2 years
- Maria Concetta Deguara Caruana Gatto vs Awtorita tad-Djar et (18/21LC) decided on 24/01/22: House in Kalkara - Yearly rent 210 euros. Following RRB case rent went up to 6,450 euros for the first two years, 7,525 for the following two years and 7,955 for the remainder two years annually

Purpose of Legal Research – Social auditing of the law – Consolidation of the Law

E.g. Is it time to consolidate rent laws in Malta?



1. Cap. 16 – Civil Code
 2. Cap. 69 – Reletting Of Urban Property (Regulation) Ordinance
 3. Cap. 158 – Housing Decontrol Ordinance
 4. Cap. 604 – Private Residential Leases Act
- + Subsidiary Legislation and legal notices made under each act

Q & A

