

# Introducing research in law and beyond



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# Introduction

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This free course, *Introducing research in law and beyond*, looks at some of the key steps those interested in undertaking a research project in law (or other fields) should consider. Drawing on experience from a number of academics within the Open University Law School and Open University, the course provides a valuable introduction to the skills that can help frame a successful research project. Beginning with an outline of the research process and how to get a project started, the course then moves on to a discussion of other key steps including production of a literature review and evaluation of appropriate research methodologies; the course also highlights the importance of ethical considerations to project design.

The course uses both audio, text-based materials and a range of activities to help as an introductory guide to mastering research projects.

This OpenLearn course is an adapted extract from the Open University course [W800 \*The law dissertation\*](#).

# Learning Outcomes

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After studying this free course, you should be able to:

- understand how to prepare to undertake a piece of research
- understand how to get started with a piece of research
- how to generate research ideas, research questions and research aims and objectives
- explain the importance of a literature review
- understand how and why to critically evaluate the literature in the chosen field of research
- understand the role of the literature review and referencing.

# 1 Preparing for research: the research process

There are different ways of breaking down the research process. Two approaches are considered here. The first consists of six key stages:

1. Research question definition – defining the research question.
2. Literature review – undertaking a literature review is known as secondary research. It is second-hand research because it is reporting and critically evaluating the work of others. It helps you determine the knowledge gaps and understand your knowledge needs. These in turn guide your research methodology.
3. Research methodology – designing the research methodology to collect the evidence required to meet your knowledge needs. In law you may choose to draw upon one or more of the following methods: doctrinal, socio-legal, comparative, international, historical, feminist, critical and transnational.
4. Conducting research – this is the primary research. It involves the collection of information for analysis, for example, by devising a questionnaire to interrogate sources you have identified through secondary research or through talking to experts in the field. Perhaps counterintuitively, you will undertake the secondary research before the primary research! Most legal research will be desk based and involve the interrogation of existing materials, for example, legislation, regulation, scholarly articles and official reports.
5. Analysing the results – this is when you consider what your findings tell you.
6. Conclusions and recommendations – at this stage you will identify the major learning from your research and make some recommendations based on your results.

Figure 1 shows a second approach to the research process. It divides the process into three stages: outcomes, research activities and enabling processes. The top flow diagram shows the outcomes of the research process, namely public, private and personal knowledge. The middle flow diagram shows the research activities. The bottom flow diagram identifies the process through which the research activities are enabled or facilitated.

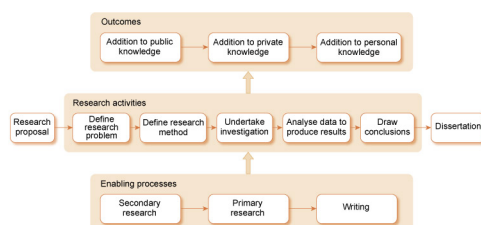


Figure 1 Outcomes, research activities and enabling processes

The difference between public and private knowledge is that public knowledge is commercially published and therefore available to all, whereas private knowledge is restricted to the organisation or institution that commissioned the research. As such, it becomes 'grey literature' where the purpose of generating the knowledge is not primarily for publication.

This overview of the research process makes it seem quite straightforward. In reality it is likely to feel chaotic at times and possibly more stressful than the overview suggests. At the beginning you can feel confused, tentative and sometimes unsettled. It is important to have faith in yourself and believe that your research question or aim will become clearer the more focused work you do and the more critical decisions you take; this is normal. It is also something that should be captured explicitly in your research diary; how you interrogated this source and honed that concept (the use of a research diary is discussed in Section 2). This helps you to understand the debates that underpinned your research and the struggles with critical decisions that you took along the way; in turn, it enables you to communicate this when writing your research project. It also demonstrates the logic of what has been done and how it has been concluded.



## 2 Getting started

This section explores ways in which ideas for research can be generated and considers the importance of refining research ideas by evaluating their suitability. It ends by looking at how to design a good research question. The aims of this section are to:

- assist you in generating research ideas
- enable you to identify a number of research questions
- encourage you to refine your research questions
- explore common pitfalls in the design of research questions.

As you work through this section you will be asked to identify three possible research questions. You will then explore how you can refine these by evaluating them for their suitability.

When generating research ideas to create a research question it can be helpful to think about topic areas. You could choose a topic: in which you are interested; around which there is current debate; where there are proposals for reform or where there has been recent reform; where the law in one jurisdiction has taken a different approach to the law in other jurisdictions; where a significant precedent has just be set or where there are significant identifiable failings in a system. This approach can assist in your search for a research idea. That idea can then be refined into a research question.

The flow diagram in Figure 2 represents the first three stages of the research selection process explored in this section. This process continues with feasibility and risk analyses which are covered in Section 3.

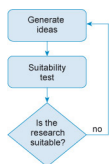


Figure 2 Flow diagram showing the stages of the research selection process explored in Section 2

### 2.1 Generate research ideas

Generating ideas for suitable research questions can be difficult but there are various approaches and techniques that can help.

#### **Keep a research diary**

You will find it helpful to keep a research diary. Its purpose is to form a permanent record of thoughts, actions, searches, notes, news items and references that you collect and generate when preparing, undertaking and reflecting on your research. A research diary provides a record of your personal learning journey and enables you to get the most out of your research. It acts as an important record of your work and progress.

Traditionally, research diaries have been paper-based and chronological or alphabetical in nature. The advent of electronic records offers new ways of keeping a research diary with some useful features, such as the search function. You may choose to keep your diary online, on paper or electronically using word processing or note-making software.

The key point is that whichever method you choose, you should try to add regular and consistent entries, including reflection on your research, the feedback you receive and the progress you make.

It is important that your research diary is right for you and assists your research, so it is worth considering alternatives before deciding upon the format you want to use.

Throughout your research you should keep a record of your notes and reflections on the material you generate and collect. This can be used to actively learn as well as archive your progress. As you undertake tasks and activities, record any problems and 'unknowns'. These may indicate gaps in knowledge and be the start of defining a suitable research question.

Your research diary is both a personal resource and a learning tool. It is a space to archive your notes, ideas, critical thinking, as well as reflection on your study and research skills development. To ensure your research diary is an effective learning tool:

- write in it regularly, even if entries are sometimes short
- use questions or prompts to help you focus on the task you need to complete
- think about whether your entry is descriptive, interpretative, investigative, analytical or evaluative
- consider illustrative techniques such as mind maps or diagrams using colour to make them more engaging and memorable (you will explore this technique shortly)
- review entries to see if you can find key themes and recognise what longer-term action you might need to take (e.g. to improve a particular research skill)
- spend some time at the end of each week reviewing and reflecting on what you have learned and planning how you will move forward
- remember that writing itself can be used as a learning tool, for example, to explore ideas as a way of understanding them.

## 2.2 Brainstorm

Although brainstorming is generally considered to be a group creativity technique, it can be used individually to generate ideas. If you decide to use this technique, I suggest that you adapt the rules along the lines indicated in Box 1 and think in terms of three separate sessions.

### Box 1 Approach to brainstorming adapted for personal use

#### Session 1

Rule 1: do not criticise

(Self) criticism can be a significant inhibitor to creativity and as much a demotivator for the individual as it is for a group. Reserve the criticism of your ideas for Session 3, which is devoted to evaluation.

Rule 2: work for quantity

The more ideas you produce, the more likely you are to generate some good ones.

Rule 3: encourage your mind to freewheel

The most outlandish thoughts can sometimes be the trigger for a practical idea.

Rule 4: try to imagine what suggestions others might make

If you put yourself into another person's shoes you can often see the problem from a different viewpoint.

Rule 5: record all ideas

This can be done by hand or electronically; sit down with a large sheet of paper (A3 or larger) or use an app. Write everything down, even your most fleeting or seemingly ridiculous thoughts. When you have exhausted your creative energy it is a good idea to stick your sheet of paper on a wall or set it as your screen saver where it will be visible.

## Session 2

Rule 6: build on ideas

You can use the concept of building on ideas during Session 1, but it is often better to let the ideas that you have generated 'mature' in the back of your mind for several days. You can then come to the ideas afresh, play with each in turn, look at them from another viewpoint, combine them, and so on. As such, this will become an iterative process, where new ideas build on old ones and old ideas are adapted to take account of new ones.

## Session 3

Rule 7: reduce your list

The first two sessions were concerned with expansion, this one concentrates on contraction. The aim is to carry forward two or three ideas that are worth further detailed work and consideration.

## 2.3 Scan

Scanning material such as journals, organisation documents and web pages can help generate ideas. Journal abstracts are useful for ideas about current research; conclusions often mention the need for more research, suggesting gaps or hinting at areas that require further investigation. Organisation documents can provide insights into how legal issues are being engaged with; they may suggest gaps and difficulties that are ripe for research.

Websites can also be a useful and quick way of generating ideas. Most especially because the information is current and presented succinctly. Hyperlinks and search facilities also enable you to follow an interest with ease. Websites that may be relevant for researchers include those of international organisations, governments, international courts, academic blogs and funded research projects, for example.

Court reports, particularly those containing judicial 'asides' are a valuable source of ideas. Equally, official inquiries that have a particular remit often indicate peripheral but important matters not investigated. When you are generating or refining ideas these sources are a rich seam for you to mine.

## 2.4 Mind maps

Mind maps (sometimes called spray diagrams) are good for remembering things, taking notes, saving time and concentrating. They are also great for generating ideas. Figure 3 shows an example of a mind map.

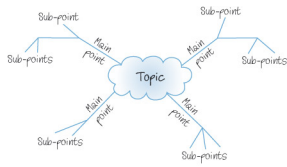


Figure 3 Mind map diagram

A cause and effect diagram is a way of analysing the possible causes of a problem so that they can be examined separately to seek a solution. It may also be referred to as a 'fishbone' or 'Ishikawa' diagram. The 'effect' is the problem for which a solution is sought, such as the growth of international piracy. It is written in a box at the end of a long arrow, as shown in Figure 4:



Figure 4 The first stage of creating a cause and effect diagram on the growth of international piracy

The 'bones' of the fish are then added as shown in Figure 5.

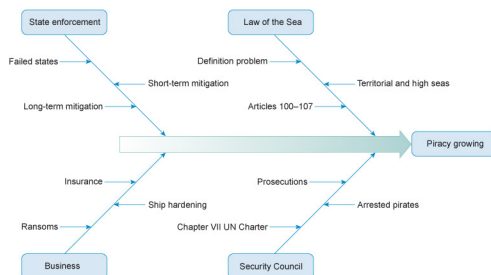


Figure 5 An example of the cause and effect technique applied to the growth of international piracy

Each 'bone' represents a possible cause of the problem. Further bones can be added until all the possible causes have been identified. The bones themselves can be broken down to aid understanding if required.

The fishbone technique keeps the ideas separate so that they can be considered more easily but also shows how they may be interconnected.

## 2.5 Decision trees

A decision tree is usually used to depict the options or various courses of actions available for solving a problem. This allows the relationships between options to be clarified, revealing the different decision points and the levels that exist. If something goes wrong, the decision can be re-examined and the point at which the wrong option was chosen can be identified.

## Box 2 Example of a decision tree

A young manager had an idea for what seemed to be a potentially profitable business opportunity. He discussed it separately with two business acquaintances, both of whom expressed enthusiasm. One had money. The other had relevant expertise and a small company that might be used to nurture the venture, but also represented a threat.

The young man was struggling to sort out how best to proceed; he had about six alternatives in his head but had not separated them out clearly. Each time he started to think about any one of them, he would quickly switch to others and end up going round in circles.

Then he produced a decision tree as shown in Figure 6. This was no more than a diagram of his options but it helped him to clarify them in his mind and he was able to think them through. Before a decision is made, each of the options must be evaluated and the possible outcome predicted.

Options can also be weighted to indicate probability.

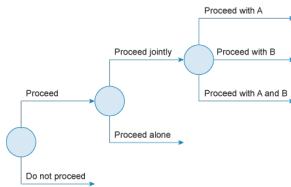


Figure 6 A simple decision tree. Note that in the diagram, decision points are shown as circles with the possible choices on the right.

## 2.6 Using drawing techniques

The use of a research diary, mind maps, cause and effect diagrams and decision trees have been suggested to help you produce three possible research questions. You will do this in Activity 1.

### Activity 1

Work through one or two drawing techniques to generate three possible topics that you might research. Do not worry about being rigorously faithful to a particular technique. The purpose of this activity is for you to think about possible research questions.

If you are unsure of what you want to research, a good starting point might be to choose three or four themes and generate one idea around each theme. Possible themes could be international law, rights, comparative law or regulation.

When you have reviewed a theme, you might draw a mind map to capture your understanding. Start by putting the theme in a central blob and radiate out with thoughts about that theme; these are effectively sub-topics which you are using to break down the main theme. These sub-topics might cover jurisdiction, evidence, exceptions, common criticisms, outcomes of reviews etc. If, for example, you choose a particular landmark case, your sub-topics could be the judgment, conflicting judgments, dissenting opinions, composition of the court, definitions and any academic articles that discuss the case. If you are looking at a particular topic in international law,

your sub-topics could be core cases, core statutes, core treaty articles, brief facts etc. Use single words or concepts to keep the mind map sharp and concise.

You will need to review the mind map to make sure that it best captures all of your thoughts around the theme. Mind maps help you appreciate how ideas progress not just chronologically, but creatively. They help you identify key concepts and approaches, and provide a fuller understanding of the topic with clarity and purpose.

## 2.7 Suitability analysis

To help you determine the suitability of your potential research questions, you should consider whether or not each one is suitable for:

- you
- stakeholders (such as the institution where you are studying, your tutor or employer).

### 2.7.1 Is the research question suitable and appropriate?

You will live with your chosen research question for many months, so you must choose something that will retain your interest. Your research is more likely to be satisfying and have a successful outcome if the topic is congruent with knowledge and skills that you already possess or that can be developed easily over the next year. This is an important point. You should not pursue a problem that requires you to learn and master major new skills.

If you have already significant knowledge of the research question and context, it is likely that you will have insights into the causes and the factors that have an impact on them. You may consider that you fully understand how to investigate it in order to achieve the best results. Whilst it is entirely appropriate to take full advantage of your knowledge and understanding, it is important to recognise the downside of this situation. Your existing knowledge may lead to a lack of objectivity and a tendency to make subjective judgements instead of evaluations based on sound evidence.

### 2.7.2 Is the research question suitable for stakeholders?

Your research question must enable you to show how its findings have broader interest. A doctrinal/black letter law approach is unlikely to deliver on this criterion without some consideration of the wider social context. The aim is for you to move away from considering the law for the law's sake, to placing the law within its wider context. Your research may be focused on a piece of proposed or actual legislation, a case or legal ruling, or an organisation, but the significance of your results must be considered with relevance to the wider context.

You will need to demonstrate the wider relevance of your research in your proposal. This will be especially important if your primary investigation is exclusively within a single organisation, or on a particular piece of legislation, as it may not be obvious that the results are applicable elsewhere. It is not enough just to state that the relevance exists; you must provide evidence in the form of a logical argument or citation of reputable sources that identify a common problem across a range of organisations, cases or countries. Your literature review is important in setting the context of your research.

There is also the possibility that your employer or an organisation to which you are connected might want you to research something of interest to them. This means that you have a stake in the research beyond just being the researcher. It is important to recognise that this could lead to a conflict of interests between the objectives of your research and those set out by your employer, or organisation. It may well be best to choose a research topic and problem that is not of interest to your employer or organisation so you do not have to negotiate a delicate balance between the two. After all, the real and long-term value to employers and organisations is the knowledge and skills that you develop throughout the research process. Consider if your findings were not complimentary to the organisation's commercial or ethical objectives. This would put you in a difficult position and in an unfavourable light. So for these reasons some caution is advised.

## 2.8 The difference between a topic and a research question

It is often relatively easy to identify an area you want to learn more about or investigate in some way. Formulating this into a research question can be more difficult. The statement 'I want to study the work of the International Labour Organisation' is too ill defined to be a research question. It is an area of inquiry that will be addressed over time by a number of researchers. It is not enough to identify a subject or phenomenon and say 'I want to know about X'. You need to specify what you want to know about X, how you might know it and why it is worth knowing.

There are two other pitfalls into which it is relatively easy to fall.

### Not starting with an open mind

Some researchers want to investigate an issue about which they have already a firm opinion. These problems are value laden:

- Why is the Corporate Manslaughter and Corporate Homicide Act 2007 not working?
- Investigation into why special international courts deliver better justice than traditional justice mechanisms.

Each implies an answer or assumes something about the world. The danger is that the 'research' will be distorted to serve the assumption and will therefore have little value. Research should step back to ask a general question without assuming outcomes so the evidence can speak. Asking why the Corporate Manslaughter and Corporate Homicide Act 2007 is not working *assumes* that it is not. The starting point should be questioning whether or not it is working. As a legal text your work must be transparent in using evidence to evaluate and not preload your research outcomes.

### Lack of context

It is easy to be so focused on your own ideas that you forget that there is an existing discourse, a whole literature, to consult. An idea may be so consuming to an individual that they miss (or ignore) the possibility that someone has already dealt with it in a similar context. At first sight this example might seem to have potential for a legal study:

- Undertaking a feasibility study of the effectiveness of the law of the sea.

However, a brief look at relevant literature quickly suggests there is already a significant body of knowledge on this topic. The big questions have already been answered so a particular niche would have to be found in order to say something grounded and original.

### **Summary**

This section has introduced the first three stages of the research selection process. It has enabled you to generate a number of research ideas using a research diary and a range of other techniques. The process of undertaking a suitability analysis was outlined as a way of identifying which potential research question was the most suitable from a personal, stakeholder and research project perspective. A further process of evaluation was also presented which considered the difference between a topic and a problem, bias and a lack of context.



## 3 Literature review and referencing

When thinking about any risks associated with your research you may realise that it is difficult to predict your research needs and the accompanying risks as you were not sure what information would be required; this is why a literature review is necessary. A thorough literature review will help identify gaps in existing knowledge where research is needed; filling those gaps is one of the prime functions of research. The literature review will indicate what is known about your chosen area of research and show where further contribution from further research can be made.

Undertaking a literature review is probably one of the most difficult stages of the research process but it can be both exciting and fulfilling. This section aims to put the literature review into context and to explain what it does and how to do it.

The literature on a particular legal topic is of fundamental importance to the international community of researchers and scholars working within particular academic disciplines. Academic publishing supports research by enabling researchers to tell the world what they have discovered and allows others researching in the same area to peer review their work; in this way a combined body of knowledge is established.

During your research, you will use the literature to:

- develop your knowledge of your chosen topic and the research process in general terms
- ensure that you have an understanding of the current state of academic knowledge within your chosen topic
- identify the gaps in knowledge that your research will address
- ensure that your research question will not become too broad or narrow.

### 3.1 The purpose of a literature review

Understanding existing research is at the core of your study. A good literature review is important because it enables you to understand the existing work in your chosen topic as well as explaining concepts, approaches and ideas relevant to that topic.

The literature review is also essential as it will enable you to identify an appropriate research method. Your research method, and needs, can only be established in the light of a review of existing knowledge.

Your literature review is regarded as secondary research. The research process is an ongoing one, so your literature review is never really finished or entirely up to date as reading and understanding the existing literature is a constant part of being a researcher; professionally it is an obligation.

#### 3.1.1 Different types of research

Your research will draw upon both primary and secondary research. The difference between primary and secondary research is that primary research is new research on a topic that adds to the existing body of knowledge. Secondary research is research into what others have written or said on the topic.

### 3.1.2 Different sources

You will also draw upon primary and secondary sources to undertake your research. Primary sources are evidence recorded at the time, such as a photograph, an artefact, a diary or the text of a statute or court ruling. Primary legal sources are the products of those bodies with the authority to make, interpret and apply the law. Secondary sources are what others have written or said about the primary source, their interpretation, support or critique of the primary source. Similarly, secondary legal sources are what academics, lawyers, politicians, journalists and others have said or written about a primary legal source.

### 3.1.3 Understanding existing research in your chosen area

Part of the aim of your studies is to make a contribution to the existing body of academic knowledge. Without a literature review there would be a risk that what you are producing is not actually newly researched knowledge; instead it may only be a replication of what is already known. The only way to ensure that your research is new is to find out what others have already done. However, this is not to say that you should never attempt to research some things that have been done before if you feel that you can provide valuable new insights.

### 3.1.4 Explaining relevant concepts and ideas

You also need to use the literature review to build a body of useful ideas to help you conceptualise your research question and understand the current thinking on the topic. By studying the literature you will become familiar with research methods appropriate to your chosen topic and this will show you how to apply them. Careful consideration should be given to the research methods deployed by existing researchers in the topic, but this should not stifle innovative approaches. Your literature study should also demonstrate the context of your own work, and how it relates, and builds, on the work of others; 'to make proper acknowledgement of the work of previous authors and to delineate [your] own contributions to the field' (Sharp et al., 2002, p. 28).

### 3.1.5 Contextualising your results

When you have completed your primary research, you will still have the task of demonstrating how your research contributes to the topic in which you have been working. Comparing your results to similar work within the topic will demonstrate how you have moved the discipline forward.

Comparing your results with the gaps that you identified in the early stages of your literature review will allow you to evaluate how well you have addressed them.

## 3.2 What to read?

A successful literature review will have references from a number of different types of sources; it is not simply a book review. What is much more important than the number of references is that you have a selection of literature that is appropriate for your research; what is appropriate will depend on the type of research you are undertaking. For example, if your topic is in an area of recent legal debate, you will probably find most of the relevant material in journal articles or conference papers. If you are studying policy issues in law

making, you would expect to cite more government reports. In either case, you will need some core references that are recent and relevant. A research project could also contain a number of older citations to provide an historical context or describe established methods. Perhaps a recent newspaper, journal or magazine article could illustrate the contemporary relevance or importance of your research.

You will have to use your own judgement (and the advice of your tutor) to ascertain what the suitable range of literature and references is for your review. This will differ for each topic of research, but you will be able to get a feel for what is appropriate by looking at relevant publications; most publications fall into the following broad categories:

## Online legal databases

Online legal research services such as Westlaw UK, Lexis Library, JSTOR, BAILII or HeinOnline are a good source of journal articles and as a repository of legislation, case law, law reports, newspaper and magazine articles, public records, and treatises.

## Journal articles

These provide more recent discussion than textbooks. Peer-reviewed journals are the gold standard for academic quality. Having at least some journal articles in your literature review is almost always required. Note that the lead time on journal articles is often up to two years, so they may not be sufficiently up to date for fast moving areas. Look for special issues of journals, as these usually focus on a particular topic and you may find that they are more relevant to your area of research.

Many law schools host journals which contain articles by academics and students; these may also be of interest. Other sources could include online newspapers such as *The Conversation* which are sourced from academia and designed to highlight current academic research or respond to current events.

## Conference literature

Academic conferences are meetings in which groups of academics working in a particular area meet to discuss their work. Delegates usually write one or more papers that are then collected into a volume or special edition of a journal. Conference proceedings can be quite good in providing a snapshot of a topic, as they tend to be quite focused. Looking at the authors of the papers can also give you an idea of who the key names in that area are. The quality varies widely, both in terms of the material published and how it is presented. Most conferences include some professional researchers, some of whom can be contacted, and lots of students. Conference papers are often refereed but usually not to the same level as journal articles.

Having conference papers in your literature review does lend academic credibility, especially in rapidly developing areas, and conference papers generally contain the preliminary work that eventually forms journal articles.

## Textbooks

Textbooks are good for identifying established, well-understood concepts and techniques, but are unlikely to have enough up-to-date research to be the main source of literature. Most disciplines, however, have a collection of canonical reference works that you should use to ensure you are implementing standard terms or techniques correctly. Textbooks can also be useful as a starting point for your literature search as you can investigate journal articles or conference papers that have been cited. Footnotes are a rich source of preliminary leads.

## Law magazines

These can be useful, particularly for projects related to the role of lawyers. Be aware of the possibility of law firm bias (for example in labour law towards employers, employee rights or trade unions) or articles that are little more than advertisements. Examples of professional journals include the *Solicitors Journal* (England and Wales), [www.journal-online.co.uk](http://www.journal-online.co.uk) (Scotland), *Law Society Gazette*, *Counsel Magazine* (England and Wales). Most jurisdictions have some form of professional journal.

## Government and other official reports

There are a wide range of publications, including 'white papers', official reports, census and other government produced statistical data that are potentially useful to the researcher. Be aware of the possibility of political or economic bias or the reflection of a situation that has since changed.

## Internal company or organisation reports

These may be useful in a few situations but should be used sparingly, particularly if they are not readily available to the wider community of researchers. They will also not have been through a process of academic review. Such unpublished or semi-published reports are collectively called 'grey literature'.

## Manuals and handbooks

These are of limited relevance, but may be useful to establish current techniques, approaches and procedures.

## Newspapers

Specialist supplements from quality newspapers can provide useful up-to-date information, as can the online versions of the same papers. Some newspapers provide a searchable archive that can provide a more general interest context for your work.

## The world wide web

This is widely used by lawyers today. According to the 2011 American Bar Association Report, 84.4% of attorneys turn to online sources as their first step in legal research (Lenhart, 2012, p. 27). It is an extremely useful source of references, particularly whilst carrying out an initial investigation. Although sites such as Wikipedia can be very helpful for providing a quick overview of particular topics, and highlighting other areas of research that may be connected to your own, they should *not* usually be included in your review as they are of variable quality and are open to very rapid change. Treat information you find on the internet with appropriate care. Be very careful about the source of information and look carefully at who operates the website.

## Personal communications

Personal communications such as (unpublished) letters and conversations are not references. If you use such comments (and of course, you should respect the confidence of anyone you have discussed your work with), you should draw attention to the fact that you are quoting someone and mark it as 'personal communication' in the body of the text. Responses you might obtain from, for example, interviews and questionnaires as part of your research should be reported as data obtained through primary research.

### 3.2.1 Peer review

It is crucial that most of your literature should come from peer-reviewed materials, such as journal articles. The point of peer reviewing is to increase quality by ensuring that the ideas presented seem well founded to other experts in the topic. Conference papers are generally peer reviewed, although the review process is usually less stringent, and so the standing of conference papers is not the same as for journals. Books, magazines, newspapers and websites (including blogs, wikis, corporate sites, etc.) are not subject to peer review, and you should treat them with appropriate caution. Also, treat each publication on its merits; it is more helpful to use a good conference paper than a poor journal paper. Similarly, it is acceptable to refer to a well-written blog by a knowledgeable and well-known author provided that you supply appropriate context. In all these cases, the important thing is that you interpret the work correctly.

## 3.3 Searching the literature

You will have undertaken legal research and developed your research skills as you prepared for earlier assignments. A literature review builds on this. You may, however, be wondering where to start. One technique is to use an iteration of five stages (see Figure 7) to help you with your early researching.

As shown in Figure 7 the five stages are: planning, searching, gathering, analysing and comparing.

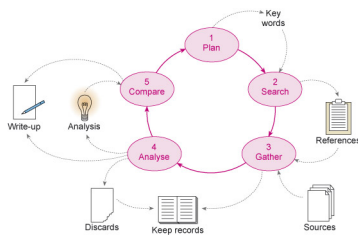


Figure 7 A five stage approach to literature search

Following these stages will provide you with a systematic approach to gathering and analysing literature in your chosen topic of study; this will ensure that you take a critical approach to the literature.

### 3.3.1 Plan

To undertake an effective review of the literature in your chosen topic you will need to plan your review carefully. This includes setting aside enough time in which to undertake your review. In planning there are several aspects you need to think about:

- What sources of information are most relevant to your chosen research question?
- What gaps in knowledge have you identified in your chosen topic and used as a basis for your research question?
- What search terms will you use and how will you refine these?
- How will you record your sources?
- How will you interrogate those sources?
- How will you continue to review the literature as you progress with your research in order to keep as up to date as possible?
- Are you able to easily access all the sources you need?
- What arrangements may you need to make to access any hard copy materials?
- Will you join one of the legal alert services to keep you abreast of changes in your chosen topic (such as new court judgments)?
- What notes of progress will you record in your research diary?

Spending time thinking about all aspects of the literature review, planning your time and setting yourself targets will help to keep your research on track and will enable you to record your progress and any adjustments you make, along with the reasons for those adjustments.

### 3.3.2 Search

This section is designed to provide you with some reminders in relation to searching, choosing search terms and some ideas about where to start in undertaking a literature review.

## Where to start

The best places to start are likely to be a legal database (or law library) and Google Scholar. Many students and academics now use [Google Scholar](#) as one of their 'go to' tools for scholarly research. It can be helpful to gain an overview of a topic, or to gain a

sense of direction; but it is not a substitute for your own research of primary and secondary sources.

Having gained an overview from your initial search through browsing general collections of documents, you will then need to undertake a more detailed search to find specific documents. Identifying relevant scholarly articles and following links in footnotes and bibliographies can be helpful as you continue your search for relevant information.

One of the decisions you will have to make is when to stop working on your literature review and your research, and when to start writing up your dissertation. This will be determined by the material you gather and the time constraints you are working to.

## Selecting resources

One starting point may be to locate a small number of key journal papers or articles; for a draft outline proposal for your research you might have around four to six of these, accumulating more as you develop the research subsequently. Aim for quality, not quantity. Look for relevant and recent publications. Most of your references will typically not be more than four years old, although this does depend on your field of study. You will need quite a few more in due course to cover other aspects of your research such as methods and evaluation, but at this stage you need only a few recent items.

While reading these documents, aim to identify the key issues that are essential to your research question, ideally around four to six.

Compare and contrast the literature, looking for commonalities, agreements and disagreements and for problem identification and possible answers. Then write up your analysis of the comparison and any conclusions you might reach. The required outcome will be that you can make an informed decision about how to proceed with your primary research, based on the work carried out by other researchers.

Note that ultimately there is no infallible means of assessing the value of a given reference. Its source may be a useful indication, but you have to use your judgement about its value for your research.

## Reviewing your sources

Skim read each document to decide whether a book or paper is worth reading in more depth. To do this you need to make use of the various signposts that are available from the:

- title page
- notes on a book's cover can help situate the content
- abstract (for a paper), or the preface (for a book)
- contents page
- introduction
- conclusions
- references section (sometimes called the 'bibliography')
- index.

In your record, make a brief note (one or two sentences) of the main points.

Next, skim through the opening page of each chapter, or the first paragraph of each section. This should give you enough information to assess whether you need to read the book or paper in more depth, again make a suitable note against that record.

## Reading in more detail: SQ3R

If you have decided to look in more detail at a source document that you have skim read, you can use the well-known 'SQ3R' approach (Skimming, Questioning, Reading, Recalling and Reviewing).

1. Skimming – skim reading the chapter or part of the paper that relates to your topic, or otherwise interests you.
2. Questioning – develop a few questions that you consider the text might answer for you. You can often use journal, chapter or section titles to help you formulate relevant questions. For example, when studying a journal article with the title, 'Me and my body: the relevance of the distinction for the difference between withdrawing life support and euthanasia', you might ask, 'How is the distinction between withdrawing life support and euthanasia drawn?'
3. Reading – read through the chapter, section or paper with your questions in mind. Do not make notes at this stage.
4. Recalling – make notes on what you have read. You should normally develop your own summary or answers to your questions. There will also be short passages that you may want to note fully, perhaps to use as a quotation for when you write up your literature review. Be sure to note carefully the page(s) on which the quotation appears.
5. Reviewing – check through the process, perhaps flicking through the section or article again. It is also worth emphasising that if you maintain your reference list as you go along, not only will you save yourself a lot of work in later stages of the research, but you will also have all the necessary details to hand for writing up with fewer mistakes.

(adapted from Blaxter et al., 1996, p. 114)

There is no doubt that this approach takes considerably more effort than sitting back and studying a text passively. The benefit from the extra work involved is the development of a critical approach, which you must adopt for your research.

## Following citations in a paper

When you have found (and read) your first couple of papers, you can then use them to seed your search for other useful literature. In this case, we will use the example in Box 1. When we looked at the references list in Suppon, J. F. (2010) 'Life after death: the need to address the legal status of posthumously conceived children', *Family Court Review*, vol. 48, no. 1, pp. 228–45, a couple of items, going only by the titles, looked promising:

- Doucettperry, Major M. (2008) 'To Be Continued: A Look at Posthumous Reproduction As It Relates to Today's Military', *The Army Lawyer*, no. 420, pp. 1–22.



- Karlin, J. H. (2006) “Daddy, Can you Spare a Dime?": Intestate Heir Rights of Posthumously Conceived Children', *Temple Law Review*, vol. 79, no. 4, pp. 1317–54.

These are simply the papers that we felt looked most appropriate from the references. There is no formula for determining the best paper; you simply need to read a few and try to develop a feel for which seem the most appropriate for your own research project. You should only be citing papers that contribute to your research in a significant way, or that you have included material from; not everything that you read (and discarded) along the way.

## Recording your references

We strongly suggest that you establish a recording system at the outset, when you begin your research and keep maintaining records in an organised and complete manner as you progress. You need to choose a consistent method of recording your references; this is a personal choice and can be paper based or electronic. Do not be tempted to have more than one method or repository as this can lead to confusion and unnecessary extra work. There are software tools available that can help you to both organise your references and incorporate them into your written work. Always keep a backup copy of your records.

The following is a suggestion as to how you might record any document that you think you may use.

Open a new record, and record the basic details:

- author(s), including initials
- date of publication
- title of work or article.

Additionally, for books:

- place of publication
- publisher
- page numbers of relevant material.

Additionally, for journal papers:

- journal name
- volume and issue number
- date of publication
- page range of the whole article.

## 3.4 Gather

‘How many references are needed to make a good literature review?’ There is no straightforward answer to this. In general, an appropriate number of references would be in the range of 15 to 25, with around 20 being typical. However, this is not hard and fast, and will depend on the topic and research question chosen.

The crucial thing is to aim for *quality* and *relevance*; there is no credit to be gained from amassing a lengthy list of material, even if it all appears to be relevant. Part of your task is to select a range of references that is appropriate for the length and scope of your

research project. It is easier, and more conducive to good research, to handle a smaller number of references specifically chosen to support your argument. Remember also that in general, a student whose research project contained a smaller number of references would generally be expected to demonstrate a deeper and *more critical* understanding of those references.

## 3.5 Analyse

A colleague once commented on a student's work in the following vein: 'I don't really need you to tell me what the author thinks, since I can read her thoughts myself, but I do want to know what *you* think about what the author thinks'. Literature reviews are not a description of what has been written by other people in a particular field, they should be a discussion of what you think of what they have written, and how it helps clarify your own thinking.

This is why critical judgement is so important for your literature review. You must exercise critical judgement when determining which sources to read in depth, and when evaluating the argument they put forward. Finally, critical judgement is important in communicating how those arguments might frame your research. It should not be a narrative of what you have read and the stories those sources tell. It should be sparing in its description of others' arguments, and expansive in how those arguments have shaped your own thinking.

You need to exercise critical judgement as to which resources are the most useful and worthy of discussion. Having done this, you also need to ensure that your review is analytical rather than descriptive. A critical review extracts elements from the resource that directly relate to the chosen research interest; it debates them, or compares and contrasts them with how other resources have analysed them. A critical examination of the literature should allow you to develop your understanding of your research question. It should guide you to what knowledge you will need to answer your research question, and begin to develop some subsidiary questions. This will break the content down into more manageable and achievable segments of knowledge that you require.

Some elements of a good critical literature review are:

- relating different writings to each other, indicating their differences and contradictions, and highlighting what they lack
- understanding the values and theories that inform, and colour, reading and writing
- viewing research writing as an environment of contested views and positions
- placing the material in the context of your own research.

### 3.5.1 Critically evaluating documents: the PROMPT system

An excellent way to critically analyse a document is to use the PROMPT system. The PROMPT system indicates what factors you should consider when evaluating a document. PROMPT stands for:

1. Presentation – is the publication easy to read?
2. Relevance – how will the publication help address your research aim?
3. Objectivity – what is the balance between evidence and opinion? Does the evidence seem balanced? How was the research funded?
4. Method – was the research in the publication carried out appropriately?

5. Provenance – who is the author and how was the document published?
6. Timeliness – is the publication still relevant, or has it been superseded?

By thinking about each of these factors when you read a publication in depth, you will be able to provide a deeper, more critical analysis of each publication. A final tip for critical reading is to note down your overall impressions and any questions you still have at the end. Keeping a list of such open questions can help you identify the gaps in the literature by noticing which questions were raised, but not answered, by the publication; this in turn will guide your research.

## 3.6 Compare

In the planning stage you thought about the gaps in existing knowledge you had identified, and which you then used as a basis to develop your research question. Through the work you undertook in the earlier stages of your literature review you have a clear understanding of the existing work within the topic. At this point a comparison of the results of your literature review, with the gaps you had previously identified, will enable you to reflect, and consider, whether you now have enough knowledge to address those gaps. You can then evaluate whether you need to further refine your literature review.

## 3.7 Referencing

Referencing allows readers to trace (and use) your sources, just as you have done from the works of others. It gives credit to others, where it is due, and avoids any possible accusation of plagiarism, which is passing off the work of others as if it were your own.

## 3.8 Using a reference management tool

During your research, it is important that you keep track of the articles and papers that you read as part of your literature review. You should also keep a record of any legislation or case law you research. You may wish to use a reference management tool (also known as 'bibliographic management software') to manage your reference list. There are many such tools available, both basic and advanced. When undertaking a legal research project you will need to choose a reference management tool that works with OSCOLA (the Oxford University Standard for the Citation of Legal Authorities). More information on OSCOLA can be found at <https://www.law.ox.ac.uk/research-subject-groups/publications/oscola>.

## Summary

This section has shown that one of the important features of the literature review is that it helps in contextualising your research. In the early stages of the research, it helps you learn about your chosen topic area, and it defines existing work in the topic and associated areas. In the later stages, it allows you to put your results into the broader context of your field of study.

To make best use of the time available to you, you will need to take a systematic approach to searching the literature; by following citation threads, forwards and backwards, it is possible to build up an overall picture of the current research quickly. When presenting your review, it is important for you to take a critical approach to your readings, and use an appropriate set of references to support the points you are making in your research.

Evaluation of the literature that you have found is very important for a successful research project. It is through critical analysis of the literature that you support your own research, and place it in overall context alongside the work of others. In doing this evaluation you must be aware of the issues of plagiarism. Remember that there is no perfect choice for your initial selection of articles, books or other resources. You are looking for a range of resources that give a good outline of the issues in the topic you have chosen to research; they should indicate some possible ways of approaching your research, and your research question.

To round-off this section on the literature review stage of the research project, the following audio involves a discussion between two of The Open University's law academics on how to undertake a literature review, and its purpose. Drawing upon both personal experience and good academic practice, the discussion gives further context to some of the ideas and issues outlined in this section.

Audio content is not available in this format.

## Conclusion

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This free course, *Introducing research in law and beyond*, has been designed to provide some guidance on how to prepare and start a research project. It has talked about the importance of thinking about the suitability of a research project, and the importance, and role, of a literature review. Throughout the research process it is important to continually review and reflect, to analyse results, and to interrogate sources of information. One of the most challenging aspects of research however is knowing when enough information has been gathered, and when to move onto the next stage of writing up. We hope that you have enjoyed this course and that you have found it helpful.

This OpenLearn course is an adapted extract from the Open University course [W800 \*The law dissertation\*](#).

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