

# 1 What is legal research?

According to the Oxford English Dictionary, research is the ‘systematic investigation or inquiry aimed at contributing to knowledge of a theory, topic, etc., by careful consideration, observation, or study of a subject’. Research attempts to ‘create order in the chaos that surrounds us’ (Van den Bos 2014, p. 19).

In legal research the researcher studies aspects of law. Van Dijk et al. (2018, p. 9) define legal research as ‘research that, either directly or indirectly, takes law as the subject of examination’. Curry-Sumner et al. (2010, p. 3) claim that legal research contributes to ‘the body of knowledge base with respect to the current state of the law’.

Vranken (2014, no. 115) stresses the importance of ‘scepticism, critique and debate’. The researcher must ‘not look for confirmation but instead for sources, data and interpretations that do not support his hypothesis or assertion.’ The motto of the researcher must be: ‘counterintuitive, meaning that he must especially be critical towards his own interpretation of what he reads and writes.’

These general definitions of legal research are obviously formulated in rather general terms. After all, there are different types of legal research (see question 3), and each type of legal research has its own definition. I will explain these later.

## Further reading:

- I. Curry-Sumner, F. Kirsten, T. van der Linden-Smith & J. Tigchelaar, *Research Skills. Instruction for Lawyers* (Ars Aequi 2010).
- E. Hirsch Ballin, *Legal Research Methods* (Edward Elgar 2020).

## Other relevant questions:

3. What types of legal research are there?

## 2 Who conducts legal research?

Various parties conduct legal research:

- **Scholars and students** – Much legal research takes place at universities and schools of applied sciences. This is conducted by professors, junior and senior lecturers, doctoral candidates and other researchers. Sometimes large research projects are involved (doctoral research, see question 13), sometimes smaller projects (writing an annotation, see question 56). Students are also involved in legal research. They write theses, are involved as student assistants in a research project or perform legal research in connection with a course.
- **Attorneys, judges, public prosecutors, civil law notaries, in-house lawyers** – Professional lawyers are often involved in legal research on a daily basis. For example, they examine what the law is in a specific situation, answer questions of law (see question 20) and solve legal problems (see question 49). Some law firms, especially the larger ones, have an academic department that conducts research. Sometimes the research conducted by professional firms looks like the research conducted at universities, but not always (see question 46).
- **Government lawyers** – Government units employ many lawyers who conduct legal research. Drafters of legislative proposals examine how a legal arrangement might be stated and whether it would hold under, for example, international or EU law. Policy lawyers want to know the exact wording of current law in order to examine what scope there is for policymaking. The research that is conducted within government sometimes looks like the research conducted at universities, but, again, it is not exactly the same.
- **Research bureaus and staffers** – Some organisations (for example, courts of justice or ministries) have a separate research bureau that conducts legal research. There are also commercial research bureaus that conduct legal research that

has been commissioned by third parties. The type of legal research conducted differs from one organisation to another.

**Further reading:**

- C. Stolker, *Rethinking the Law School* (Cambridge University Press 2014).

**Other relevant questions:**

3. What types of legal research are there?
13. What does it take to obtain a doctorate in the field of law?
46. What is the difference between a judge and a legal scholar?

## 3 What types of legal research are there?

There are different types of legal research and different categories per type of research.

Van Dijck et al. (2018, pp. 9-11), for example, distinguish research that is conducted by present and future legal scholars from legal research conducted by other lawyers. There are many similarities between **academic legal research** and **non-academic legal research** but also differences. In academic research there is more freedom of choice in determining the research question and its design. Academic research also generally goes beyond the individual case level. Lastly, the legal scholar is not bound, or to a lesser degree, by current law, unlike a judge or public notary.

Van Dijck et al. (2018, p. 61) also distinguish between **fundamental legal research** and **applied legal research**, although they themselves indicate that the distinction is not always very strict in practice. Fundamental legal research focuses on 'the development of new theories, concepts, doctrines and the testing of hypotheses or assumptions that arise from the theory'. Applied legal research, on the other hand, 'generally focuses on the application of existing

theories, concepts and doctrines or on the solution of problems in the legal practice’.

Curry-Sumner et al. (2010, pp. 3-7) apply a similar distinction.

**Practice-based legal research** is ‘focused on the inventory, comparison and analysis of the current state of the law in a particular case’. The research is practice-oriented since the purpose is ‘to provide an answer to the concrete legal question that has arisen in the practical operation of the law’. The research can also pertain to less concrete questions ‘and entail research into the analysis and meaning of a certain development in the law’. If the purpose of the research is less relevant for the dispensation of justice, then, according to Curry-Sumner et al., it is more theoretical. They then speak of **theoretical legal research** (see question 27).

Cryer et al. distinguish between **expository scholarship** and **evaluative scholarship**. The former type of scholarship ‘is answering descriptive questions about the way the (legal) world is’ (2011, p. 9). Cryer et al. state that the term ‘descriptive’ must not be equated with simple research since the analysis can be quite complex. The latter type gives ‘an assessment of the way the (legal) world is, and either implicitly or explicitly, subjecting the law to appraisal either from the point of view of coherence with earlier law, other areas of law, or from an external viewpoint, and where shortfalls are identified, suggesting how things might be improved’ (2011, p. 9).

Another distinction pertains to doctrinal legal research, meta-legal research, normative research and empirical legal research (see questions 5-8).

### Further reading:

- I. Curry-Sumner, F. Kirsten, T. van der Linden-Smith & J. Tigchelaar, *Research Skills: Instruction for Lawyers* (Ars Aequi 2010).
- R. Cryer, T. Herbey & B. Sokhi-Bulley, *Research Methodologies in EU and International Law* (Hart Publishing 2011), pp. 7-11.

- E. Hirsch Ballin, *Legal Research Methods* (Edward Elgar 2020), pp. viii-14.
- M. van Hoecke, 'Legal doctrine: which method(s) for what kind of discipline?', in M. van Hoecke (ed.), *Methodologies of Legal Research* (Hart 2013).
- J.M. Smits, *The Mind and Method of the Legal Academic* (Edward Elgar 2012).
- C. Stolker, *Rethinking the Law School* (Cambridge University Press 2014), pp. 200-230.

#### Other relevant questions:

1. What is legal research?
2. Who conducts legal research?
5. What is doctrinal legal research?
6. What is meta-legal research?
7. What is empirical legal research?
8. What is normative research?

## 4 Is law a science?

This is a difficult question, one that occupies many legal experts. For quite some time now they debate the question whether law is an academic discipline.

In view of the objectives of this book, it would take us too far afield to reconstruct the entire debate. I do, however, wish to mention several points that many legal researchers meanwhile agree on:

- Law is a science. The academic field of law is not the same, however, as a natural science such as chemistry, or the humanities such as philosophy, or a social science such as psychology. The standard view of science, which has the falsification of hypotheses as a central element (see Popper 2002 and questions 27-30) can generally not be applied to the academic field of law (see Hesselink 2009).