



# Legal Types of Research Methodology

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## 1. Legal research and research methodologies

Engaging in research is a necessary precursor to writing a research paper. A useful definition of research, and one with which your law teachers will be familiar, is the definition adopted by the Tertiary Education Commission for the purposes of its Performance Based Research Fund

1. “original investigation undertaken in order to contribute to knowledge and understanding”
2. There is a variety of accepted methodologies or ways of going about legal research and it is not uncommon for more than one methodology to be employed in the course of completing a single research project.

## 2. Doctrinal research

One methodology of which you will already have experience is doctrinal research, or “black-letter law”

Doctrinal research focuses on determining what the law is on a particular point. It involves locating and interpreting relevant primary and secondary sources of law and synthesising those sources to form a rule or rules of law. As part of this process, an evaluation and critique of competing or inconsistent sources may be required. Doctrinal research may also suggest ways in which the law should develop.

## 3. Theoretical

Although many legal research projects have a doctrinal component, legal research does not stop at a simple determination of what the law is, no matter how complex a task that might be. A research project might also take a theoretical approach to determine a set of principles upon

which the law should be based. As an example, Jackson’s creditors’ bargain theory of insolvency law suggests that the measure of the appropriateness of insolvency laws is whether they mirror an agreement creditors would strike among themselves if they were in fact able to do this before their common debtor became insolvent

Jackson’s work is also an example of an interdisciplinary approach to research in that he follows a law and economics approach to formulate this theory.

A research project might consider whether an area of law is in need of reform or whether a proposed reform is necessary and/or desirable. A recent example of a research paper taking this approach is Watson and Hirsh’s paper focusing on the merits of the proposal to criminalise breaches of certain of the directors’ duties set out in the Companies Act 1993

## 4. Comparative approach

A research project might adopt a comparative approach and investigate the historical and cultural context giving rise to the development of legal rules in different legal systems. Sheehy, Stubbs and Tolmie’s comparative analysis of the laws of Australia, Canada and New Zealand with respect to defences to homicide for battered women is a recently published example of comparative legal research

## 5. Empirical research

A research project might involve the collection of data via empirical research methods such as

observation, surveys and interviews. Cheer's work investigating whether New Zealand's defamation laws have a chilling effect on the media is an example of this form of research. Depending on the type of data to be collected, be aware that there may be an institutional requirement for prior approval by an ethics committee or similar body.

## 6. Legal history

Legal history is another research methodology. Historical legal research encompasses a range of possibilities including a study of the historical development of a particular legal doctrine or the history of a legal institution or the legal profession. A recent example of historical research is Finn's work on the "founders" of New Zealand's legal profession — the cohort of lawyers practising in the period 1841–1851.<sup>10</sup>

## 7. Socio-legal research

To the extent that a legal researcher goes beyond doctrinal research and takes a broader perspective encompassing some aspect of law in its social context, the term socio-legal research may also be applied to describe the research method(s) utilised.

## 8. Expectations

The idea of contributing to the existing body of legal knowledge may be exciting, or somewhat daunting, or some combination of the two. As a general rule, there are differing expectations of students writing at differing levels of legal study. Although a research project at PhD level might be required to make a significant and original contribution to the body of knowledge in a particular field, the requirements for LLB Honours students or students completing a research paper as part of the assessment for an undergraduate paper may be somewhat less. One of the first things you should do is familiarise yourself with the expected outcome for a research paper in the degree or subject in which you are enrolled as this may have a significant bearing on your choice of topic.

The Performance Based Research Fund (PBRF) was established to "monitor the research performance of [New Zealand] tertiary institutions with the aim of encouraging and rewarding excellent research":

## References

1. See Dawn, Watkins and Mandy Burton (eds) *Research Methods in Law* (e-book ed, Taylor & Francis, 2013) for a detailed description of many of the research methods outlined in this section. See also Terry Hutchison *Researching and Writing in Law* (3rd ed, LawBook, Pyrmont, 2010).  
See Terry Hutchison and Nigel Duncan "Defining and Describing What We Do: Doctrinal Legal Research" (2012). 17 *Deakin LR* 17.
2. Susan, Watson and Rebecca Hirsh "Empty Heads, Pure Hearts: The Unintended Consequences of the Criminalisation of Directors' Duties" (2011). 17 *NZBLQ* 302.
3. Suzanne Corcoran "Comparative Research Methodology" (1996) 1 *Canberra L Re* 54 at 55. Elizabeth Sheehy, Julie Stubbs and Julia Tolmie "Defences to Homicide for Battered Women — A Comparative Analysis of the Laws of Australia, Canada and New Zealand" (2012) 24 *Syd LR* 467.
4. Tertiary Education Commission *Performance-Based Research Fund-Evaluating Research Excellence-the 2012 Assessment Interim Report* (Tertiary Education Commission, Wellington, 2013) at 23.
5. Thomas Jackson "Bankruptcy, Non-bankruptcy Entitlements and the Creditors' Bargain" (1982) 91 *Yale LJ* 857.
6. Ursula Cheer "Defamation in New Zealand and Its Effect on the Media-Self-Censorship or Occupational Hazard?" (2006). *NZ Law Review* 467.