

**A FRAMEWORK FOR AN INTERDISCIPLINARY LEGAL RESEARCH
METHODOLOGY: A PROPOSED STEP BY STEP APPROACH**

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ABSTRACT

The literature on interdisciplinary legal research methodology addresses the theoretical and conceptual bases, and justification for interdisciplinary legal research methodology. There is, however, little or no in-depth literature on how to undertake that kind of study or the methods for making such an inquiry. Yet a technical methodological know-how to do interdisciplinary legal studies is critical, given the interest generated in the study in recent times and the fact that methodology goes to the root of the validity of a study. This paper intends to contribute to filling the gap by proposing a step-by-step approach to the interdisciplinary legal research methodology. This is done by utilizing the social science qualitative research methodology paradigm to demonstrate how to interweave or analyze different accounts of law and non-law data into a single narrative of harmony or disharmony as the case may be. It should be noted that the nature of the research question(s) could precipitate the use of the quantitative methods or a combination of both qualitative and quantitative paradigms where desirable. The paper in consequence is significant as it intends to serve as a useful guide to law students, legal academics, judges and other scholars in their quest to engage in an interdisciplinary legal research study.

I. INTRODUCTION

An interdisciplinary legal research method is defined as “legal research which incorporates insights from non-legal disciplines.”¹ It is a legal research methodology whereby a non-law data is added to black letter law for analysis to determine or form a perspective on law. The interdisciplinary idea to the study of law emerged as a “reaction to the conventional approach to the study of law as known up to the 1960s.”² That the doctrinal legal analysis was insufficient to study and understand law in terms of how it resonates in society. Interdisciplinary legal analyses—“law ands” have emerged.³

The interdisciplinary research methodology is now on the increase. In a survey by Cownie of legal academics in the UK, half reported of adopting socio-legal approach to the study of law... whereas the other half who believed in the ‘black letter law’ did believe in the importance of bringing contextual issues to the study of law.⁴ The field is referred to by different nomenclatures such as, socio-legal studies, law ands, law and humanities comprising of law and language, law and literature, law and economics and others.⁵ The arena of interdisciplinary legal studies is filled with so many theoretical and or conceptual dimensions and approaches as well as practical or realistic variations.

Debates surround interdisciplinary legal research methodology. “Many interdisciplinarians perceive doctrinalists - adherents of black letter law to be intellectually rigid, inflexible, and inward looking; while many doctrinalists regard [socio-legal]

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¹ Wendy Schrama, 'How to Carry out Interdisciplinary Legal Research: Some Experiences with an Interdisciplinary Research Method' (2011) 7 *Utrecht L Rev* 147 at 147.

² S. Halliday, *Judicial Review and Compliance with Administrative Law*. Oxford: Hart Publishing (2004). See also Richard A. Posner, *The Decline of Law as an Autonomous Discipline: 1962-1987*, 100 *Harv. L. Rev.* 761, 762 (1986-1987), Holmes

³ M. Galanter, & M. Edwards, *The Path of the Law Ands*, *Wisconsin Law Review*. (1997) 375, Retrieved April 6, 2013 from <http://ssrn.com/abstract=1001444>.

⁴ Cownie, F. *Legal Academics: Cultures and Identities*. Oxford: Hart Publishing (2004).

⁵ M. Balkin and Sanford V. Levinson, *Law and the Humanities: An Uneasy Relationship*, (2006) 18 *Yale Journal of Law and the Humanities*, 155. P. 161

interdisciplinary research as amateurish dabbling with theories and methods the researchers do not fully understand”.⁶ The debates are generally informed by certain questions such as “whether law is sufficient to itself or needs help from outside sources: whether law is a discipline or merely a form of area studies: and whether legal reasoning is distinct science or is continuous with—and therefore might appropriately be nourished by— knowledge and skills from other areas of study.”⁷ Each of these questions according to Balkin and Levinson ⁸pose a sharp divide between internalist and externalist adherent to law and legal education. They further maintain that each of these approaches may divide each question into two. The first question being “what methods, skills, and forms of knowledge are necessary or appropriate for arguing, analyzing, discussing and deciding legal questions? Are these methods wholly internal to law or do they come from outside it?”⁹ The second question being “what attitude should a student or scholar of the law have about the subject? Must the student or scholar be a participant who understands himself or herself as furthering the aims and purposes of the enterprise of law, or should he or she take the (relatively) detached attitude of a social scientist studying a social phenomenon from the outside? This is a question of disciplinary attitude.”¹⁰ An answer to these questions is clearly dependent on the legal question(s) being considered by a given study.

Generally legal research has been classified into four as doctrinal, problem, policy and law reform research.¹¹ The Pearce Committee of Australia in 1987 looked at definitions of legal research based on the researches that have churned out of law schools and categorised legal research into three as; doctrinal research, reform-oriented research, and theoretical research. The research question may dictate the methodology which could be doctrinal legal research methodology or interdisciplinary legal research methodology and for that matter the internalist or the externalist perspectives respectively. This seems to be the acceptable and or agreeable position on the matter. The doctrinal traditional legal research methodology seems settled. On the other hand, literature on interdisciplinary legal research methodology addresses the theoretical and conceptual bases, and justification for interdisciplinary legal research methodology. There is however, little or no in-depth literature on how to undertake that kind

⁶ Michael Salter and Julie Mason, *Writing Law Dissertations: An Introduction and Guide to the Conduct of Legal Research*. Pearson Longman (2007).

⁷ M. Balkin and Sanford V. Levinson, *Law and the Humanities: An Uneasy Relationship*, (2006) 18 *Yale Journal of Law and the Humanities*, 155. P. 161

⁸ *Ibid.* p. 161

⁹ *Ibid.*

¹⁰ *Ibid.*

¹¹ Ian Dobinson and Francis Johns *Qualitative Legal Research*, in Mike McConville and Wing Hong Chui, *Research Methods for Law*, Edinburgh University Press (2007) (16-45) at p.. 20

of study or the methods for making such an inquiry. Meanwhile, a technical methodological know-how to interdisciplinary legal studies is critical, given the interest generated in the study in recent times and the fact that methodology goes to the root of the validity of the study. The problem however is that there is yet to emerge a settled framework for undertaking the said research. This paper intends to contribute to filling the gap by proposing a step-by-step approach to an interdisciplinary legal research methodology through the qualitative paradigm of the social science research methodology. The paper in consequence shows how to interweave or analyze different accounts of law and non-law data into a single narrative of harmony or disharmony, as the case may be. In terms of the organization, it provides for the theoretical frame of interdisciplinary research, and a proposed step by step approach to obtaining legal and non-legal data and analyzing the two for the research report.

II. THEORETICAL FRAME OF INQUIRY FOR INTERDISCIPLINARY LEGAL RESEARCH METHOD

A. Justification for the Choice of interdisciplinary Legal Research Method

The study on the external effectiveness of law which is grounded in the interdisciplinary legal studies looks at the legal norms in real life.¹² Researcher should indicate the reasons and justification for choosing an interdisciplinary legal research methodology for a study. The interdisciplinary idea to the study of law emerged as a “reaction to the conventional approach to the study of law as known up to the 1960s.”¹³ Holmes attacked the ideology or the conventional approach to the study of law and argued that “law is a tool for achieving social ends, so that to understand law requires an understanding of social conditions.”¹⁴ The implication of Holmes ideology and other legal realist is that; “law is a deliberate instrument of social control, so that one has to know something about society in order to be able to understand law, criticise it, and improve it”¹⁵ In the words of Wendy Schrama “legal provisions are often based on presumptions on people’s behavior, but are these presumptions realistic?”¹⁶ So external effectiveness refers to the external consistency of the legal system with the context and culture in which it functions which could be followed by the examination of the problem

¹² Wendy Schrama, *supra* note 1.

¹³ S. Halliday, *Judicial Review and Compliance with Administrative Law*. Oxford: Hart Publishing (2004).

¹⁴ Holmes. p762

¹⁵ Holmes *Ibid*, p762 *Ibid*, p.763.

¹⁶ Wendy Schrama, *supra* note 1.p, 148

associated with the law or assessment of the underlying policy, and the necessity for law reform. Researcher should indicate the reasons and justification for choosing an interdisciplinary legal research methodology for a study. The choice is appropriate if the study is about the external effectiveness of the law; that is the external consistency of the legal system with the context and culture in which it functions. Therefore, the study could be the examination of the problem associated with the law or assessment of the underlying policy, and the necessity for law reform. Thus such studies may aim at addressing the “relationship between legal systems and their social systems”. They may also focus on “the actual behavior of legal institutions, legal processes, legal change” and ”the social consequences of law”. . Such studies may be grounded partly in social science research methodology since they would require an empirical data or information. An empirical data is;

based on observations of the world, in other words, data, which is just a term for facts about the world. These facts may be historical or contemporary, or based on legislation or case law, the results of interviews or surveys, or the outcomes of secondary archival research or primary data collection. Data can be precise or vague, relatively certain or very uncertain, directly observed or indirect proxies, and they can be anthropological, interpretive, sociological, economic, legal, political, biological, physical, or natural. As long as the facts have something to do with the world, they are data, and as long as research involves data that is observed or desired, it is empirical.¹⁷

Having justified the choice of an interdisciplinary legal research method, the next step is to embark on the doctrinal legal analysis to establish the internal state of the law in terms of the legal question of the study.

The Doctrinal Legal Research Paradigm

The black letter law approach to legal research seeks to ground legal research in its disciplinary core distinct from other disciplines. It is the known and accepted principles of law set down and established, either in legislation or case law, and ascertainable from printed sources—the

¹⁷ Ian Dobinson and Francis Johns, *supra* note 13

established, uncontested body of law i.e. statute or legislation. They are generally known and free from doubt or dispute.

Legal training was developed from the rhetorical tradition handed down from the Greek and Roman philosophers. The Catholic monasteries which were the main centre of learning in the medieval times kept the tradition. In 1088 the first University for the study of law was established in Bologna. Legal training done in Latin and doctrinal textbooks were used with that of Aristotle being used for Arts and Justinian for Law.¹⁸ In Europe the Universities concentrated on the study of civil law, and before codification in the 19th century, doctrines and learned writings were a major source of law. Blackstone lectures at Oxford from 1753-1765 were published as commentaries and attempt was made to document and teach English Common Law. The inductive method and teaching from cases, with precedents were developed in the late 19th Century by Langdell at Harvard University.¹⁹ Doctrinal research has been continued in the common law jurisdictions and it is the cornerstone for the training of lawyers. The conventional approach was based on the firm believe that law was an autonomous discipline which should be studied as an end in itself.²⁰ And attention was not given to the “fundamental questions about laws nature, sources, and consequences as a social phenomenon or about its moral groundings”²¹ This conception of law as an autonomy at first emerged as a political tool that the judges in England used to “fend off royal interference with their decisions.”²² Lawyers used it to protect monopoly over legal representation. It was later made academic in the 1870 by Langdell which informed the nature of training of lawyers and legal scholarship. Doctrinal research is the traditional legal research method with a focus on

¹⁸ See Nadia E, Nedzel, *Legal Reasoning , Research and Writing for International Graduate Students*, Wolters Kluwer, New York (2017} for more information on the development of the common law and other legal systems. See also ¹⁸ See R.A Posner, *The Decline of Law as an Autonomous Discipline: 1962-1987*, *Harvard Law Review*, (1987). 761-780, at 762.

¹⁹ L.A. Nkansah & V. Chimbwanda, *Interdisciplinary Approach To Legal Scholarship: A Blend From the Qualitative Research Paradigm*, (2016) *Asian Journal of Legal Education* 3(1) 55-71. See also ¹⁹ See R.A Posner, *The Decline of Law as an Autonomous Discipline: 1962-1987*, *Harvard Law Review*, (1987). 761-780, at 762.

²⁰ See R.A Posner, *The Decline of Law as an Autonomous Discipline: 1962-1987*, *Harvard Law Review*, (1987). 761-780, at 762.

²¹ Read R. Cotterrell, *Subverting Orthodoxy, Making Law Central: A View of Sociolegal Studies*, 29(4) *Journal of Law and Society*, (2002) 632-644, at p.633).

²² R.A. Posner, *The Decline of Law as an Autonomous Discipline: 1962-1987*, (1987) 100 *Harvard Law Review* at 762

principles divined by the court and legislation within the common law tradition.²³ It is referred to as:

“research which asks what the law is in a particular area. The researcher seeks to collect and then analyse a body of case law, together with any relevant legislation (so-called primary sources). This is often done from a historical perspective and may also include secondary sources such as journal articles or other written commentaries on the case law and legislation. The researcher’s principal or even sole aim is to describe a body of law and how it applies. In doing so, the researcher may also provide an analysis of the law to demonstrate how it has developed in terms of judicial reasoning and legislative enactment. In this regard, the research can be seen as normative or purely theoretical.”²⁴

According to Granville William, there are two kinds of legal research that is “one being ‘the task of ascertaining the precise state of the law on a particular point’; the other being ‘the sort of work undertaken by lawyers (often but not always academic lawyers) who wish to explore at greater length some implications of the state of the law . . . ’.”²⁵ Ian and Johns are of the view that Granville Williams is indeed talking about only one sort of legal research because the difference he pointed out has to do with the degree, and same methodology will apply to both studies. The doctrinal legal research looks at the “internal consistency and coherence of law”²⁶ in terms of its effectiveness in regulating human behavior and keeping order. The doctrinal or theoretical legal research aspect would be grounded in the traditional legal methodology. This could be studied on its own or could be the starting point for interdisciplinary legal research which would look at the external effectiveness of law.

It should be pointed that it appears in the literature that doctrinal legal research could be classified as or it is equivalent to quantitative as opposed to being qualitative in nature,²⁷ whereas others consider it as qualitative research.²⁸ Hence the terminologies “qualitative legal research” and “quantitative legal research”²⁹ This paper is not intended to be part of that debate except to say that the boundaries of doctrinal legal research have been traditionally determined, but not closed. An interdisciplinary legal study may use doctrinal legal research method as a

²³ For detailed discussion on doctrinal legal research methodology see Terry Hutchinson and Nigel Duncan, ‘Defining and Describing what We Do: Doctrinal Legal Research’ (2012) 17 (1) Deakin Law Review 83-119.

²⁴ Ian Dobinson and Francis Johns, supra note 13 P.19

²⁵ Quoted in Ian Dobinson and Francis Johns supra, note 13 at P.19

²⁶ Wendy Schrama, supra note 1 at 148

²⁷ T. Hutchinson, *Researching and Writing in Law* (2nd edn) (Pyrmont, NSW: Lawbook C, 2006 31-44

²⁸ See *Ian Dobinson and Francis Johns*, supra, note 13

²⁹ *Ibid.*

starting point to determine the law on the research question(s) of a given study. Having determined the law, the next step in the theoretical research paradigm of the interdisciplinary legal methodology looks at the external effectiveness of the law by examining the social data within the contexts of the law through the social science research methodology which follows.

B. The Social Science Research Paradigm

Research methodology in the social sciences refers to the theoretical and philosophical framework that grounds a given study as well as the procedures and processes employed for the study. Social science research methods are grouped into two; qualitative and quantitative or mixed methods approach. The mixed method is a mix of the qualitative and quantitative approaches. Creswell defined qualitative research as:

“An inquiry process of understanding based on distinct methodological traditions of inquiry that explores a social or human problem. The researcher builds a complex, holistic picture, analyses words, reports detailed views of informants, and conducts the study in a natural setting.”³⁰

The qualitative tradition of inquiry is recommended for a study where the research topic calls for an exploration because theories do not exist to explain it, variables are not easily identifiable, a need exists to present a detailed account of the topic, and researcher needs to learn in order to provide a narration and the viewpoint of participants.³¹ A study undertaken in such circumstances can be by exploratory means.³²

The quantitative method or survey questionnaire is another method for data collection. The quantitative method according to Martyn Hammersley: “refers in large part to the adoption of the natural science experiment as the model of scientific research, its key features being quantitative measurement of the phenomena studied and systematic control of the theoretical variables influencing those phenomena.”³³

³⁰ Creswell, W.C. (1998). *Qualitative inquiry and research design: Choosing among five traditions*. Thousand Oaks London: Sage Publications.(1998) p.15

³¹ Ibid, 85; R.A. Singleton, & B..C. Straits, *Approaches to social research* (4th Ed). New York: Oxford University Press, (2005);A. Strauss, & J.Corbin, , *Basics of qualitative research: Grounded theory procedures and techniques*. Newbury Park, CA: Sage Publications (1994) W.M.K. Trochim, *The research methods knowledge base* (2nd Ed.).United States of America: Atomic Dog Publishing, (2001).

³² Strauss & Corbin Ibid..

³³ As quoted in Wing Hong Chui, Quantitative Legal Research, in Mike McConville and Wing Hong Chui edited, *Research Methods for Law*.(2007) Edinburgh University Press 46-68.

In comparison with qualitative interviews, the quantitative survey questionnaire has the advantages of being devoid of the researcher's bias and for being cost effective.³⁴ Questionnaires would require the use of variables derived from pre-existing theory to test the hypothesis. Without that hypothesis testing may not be possible. Utilizing questionnaires may also not yield the detailed information needed to provide understanding of an issue. Also, with the use of questionnaire, information would have to be accepted on the face of it, as there would be no opportunity to probe for clarification.³⁵

The distinction between the two methods is based on ontological assumptions — what constitutes reality or the nature of reality in terms of knowledge generation. Within the qualitative tradition, the ontological assumption emphasizes the subjective and diverse nature of reality. It requires researchers to report participants' views and diversity of opinions. The *epistemological* assumption in the qualitative tradition presupposes a close proximity between researcher and the data being studied. A qualitative researcher needs to spend time in the field to understand the phenomenon in order to report on it.

The quantitative paradigm on the other hand, is based on the positivists' traditions which consider reality on the basis of what is observable. For quantitative research ontology stems from positivism and assumes that there is an objective, rationally organized reality which is independent of researchers' perceptions as well as those who participate in research.³⁶ Thus, quantitative research takes an *etic* view in epistemology where researchers are outsiders of what is being investigated. In other words, they cannot influence or be influenced by what is being investigated to find the truth that is objectively measured. It uses mechanistic processes to test existing theories and the researcher is detached from the process.

There is an ongoing debate as to the superiority of the two paradigms by their respective supporters. Supporters of the quantitative paradigm “perceive qualitative research to be exploratory, filled with conjecture, ‘unscientific, value laden and a distortion of the canons of ‘good’ science”³⁷ Supporters of qualitative research maintained that “positivists in the social sciences are pseudo-scientific, inflexible, myopic, mechanistic, outdated...and limited to the realm of testing existing theories at the expense of new theory development.”³⁸

³⁴ Singleton & Straits, *supra*, note 33

³⁵ D. Nachmias, & C. Nachmias, *Research methods in the social sciences* (3rd Ed.). New York: St Martins Press (1987).

³⁶ Needleman & Needleman, 1996; Slevitch, 2011.

³⁷ C. Goulding, *Grounded Theory: A practical guide for management, business and market researchers*. London: Sage Publications (2002) p.11.

³⁸ *Ibid*, p 11-12

The quantitative and qualitative divide is largely due to the misconception of their respective origins, the metaphor that frames them, and the *ontological* differences of the two. Each of these paradigms has its strengths and weaknesses. Each paradigm has a specific role in knowledge generation by themselves or in a combination with the other “the debate is much ado about nothing.”³⁹ Differences do exist at the levels of assumptions, and that accounts for the debate. The differences disappear at the level of data because qualitative data can be converted into numbers and quantitative data into words. The choice of a tradition of inquiry therefore should be determined by the nature of the topic being studied and the questions that drive the research. The next section looks at the step-by-step approaches to the proposed methodology for the interdisciplinary legal research method.

III. THE PROPOSED STEP BY STEP DESIGN OF STUDY THROUGH THE QUALITATIVE PARADIGM

This part addresses the proposed research design for an interdisciplinary legal research. To this end it covers sections of introduction to an interdisciplinary legal research methodology, section on obtaining legal data through the doctrinal legal research methods which should be the starting point for an interdisciplinary research, a section on obtaining data through the qualitative research methods of the social sciences, and a section on merging the legal findings with the non-legal findings for analysis and coherent narrative report.

A. Introduction and Background to the Study

There should be an introduction and background to the study which clearly shows the focus of the study and its importance. This should be followed with the statement of problem. This should be based on a summary of the literature that substantiates the problem necessitating the study. Next is the objectives of the study, which should logically flow from the problem of study. After these should be the research or legal question(s)/hypothesis, then the significance of study, justification of study, scope and limitation, the choice of methodology which is interdisciplinary legal research method, the conceptual framework and organization of study.

³⁹ W.M.K. Trochim. *The research methods knowledge base* (2nd Ed.). United States of America: Atomic Dog Publishing (2001).

B. Obtaining Legal Data through Doctrinal Legal Research Methodology

As noted earlier, all categories of legal research could be doctrinal, problem, policy or law reform based. The doctrinal research is intrinsically important to the discipline of law. It is the cornerstone of its methods. An interdisciplinary legal research method should therefore begin with the aspect of the legal research methods. In that the others, both evaluative and theoretical use doctrinal research to identify the pertinent law (i.e. legislation, rules and principles) before, for example, embarking on any empirical work on the policy or context behind the implementation of the law, or the subsequent effects of the law on the community.

Legal academics, judges and practitioners are already conversant with this aspect of the doctrinal research. The rubrics of black letter law approaches to doctrinal research should be addressed, namely, defining characteristics of this research methodology, its analytical techniques, the assumptions and limitations, and its central goal.⁴⁰ The stages and strategies involved may include the following: (1) assembling relevant facts; (2) identifying legal issues; (3) analysing the issues with a view to searching for the law; (4) locating and reading background information (including legal dictionaries, legal encyclopaedias, textbooks, law reform reports, policy papers, looseleaf services, journal articles); (5) locating and reading the primary sources of law (including legislation and delegated legislation and case law); (6) synthesizing all the issues in context; (7) coming to a tentative conclusion. The legal data may consist of statutes, cases, law books and journal articles which are relevant to the legal research questions. Analysis may utilize one or more of the various forms of legal reasoning which includes rule-based reasoning, analogous reasoning, principled based reasoning etc. At the conclusion of this part, the researcher should be having the result of the law data of the subject matter of the research.

C. Obtaining Qualitative Data from Social Science Research Methodology

1. The Qualitative Traditions of Inquiry

There are several qualitative paradigms or traditions. These traditions include ethnography, grounded theory, phenomenology and biography. Ethnographic research involves studying a

⁴⁰ Michael Salter and Julie Mason, *Writing Law Dissertations: An Introduction and Guide to the Conduct of Legal Research*. 2007, Pearson Longman

group or groups in terms of their cultural behaviour in order to describe and interpret them.⁴¹ Observation is a major data collection process used for ethnographic. A grounded theory research seeks to generate a theory from a study. The essence of a grounded theory is to utilize data generated from the study to build theory—the emergent theory constitutes the findings of the research.⁴² Phenomenology concentrates on real life activities, experiences, or situations in order to explain or describe a phenomenon.⁴³ In phenomenological study, participants are carefully chosen to ensure that they have experienced the phenomenon being studied. From the responses obtained, a general meaning is generated. In addition to the paradigms described above is case study. Creswell defined case study as “an exploration of a bounded system or a case (or multiple cases) over time through detailed, in-depth data collection involving multiple sources of information rich in context.”⁴⁴ Case study allows for an in-depth study of a phenomenon from a wider sphere howbeit bounded by time, events, activities and, or individuals. It is rich in context and draws data from several sources.⁴⁵ It provides for multiple sources of data to build a comprehensive picture of what is being studied.⁴⁶ There is also biographical research, which studies the life of a person, that is, the life history of an individual. The interdisciplinary law researcher must choose a paradigm that is suitable for the objectives of the research.

2. *Data Collection Procedures for the Qualitative Tradition*

Sample and Population

This section describes the sample, including the sample size and categories involved, sampling procedures and strategies utilized for selecting the participants, and procedures used generally for gaining access to the participants in the study.

Sampling Procedures

⁴¹ Creswell, *supra*, note 32.

⁴² Creswell, *supra* note 32

⁴³ Creswell, *Ibid*

⁴⁴ Creswell, *Ibid.* p.61.

⁴⁵ Creswell, *Ibid.*

⁴⁶ C,S, Jacelon, & K.K. O’Dell, Case and grounded theory as qualitative research methods. (2005) *Urologic Nursing*, 25(1), 49-52.

In the qualitative research tradition, sampling refers to the selection of participants and documents that are relevant for a given study.⁴⁷ It is important to select participants and documents on the basis of their ability to contribute to the understanding of the phenomenon being studied. This is because qualitative studies focus on “describing, understanding, and clarifying a human experience.”⁴⁸ “The basis of this decision is the judgment of those whose experience most fully and authentically manifests or makes accessible what researcher is interested in.”⁴⁹ The selection therefore should consist of “series of intense, full, and saturated description of the experience under investigation.”⁵⁰ Representativeness is not the selection criteria of importance but that of experience. Experience constitutes the unit of analysis and not individuals or groups.⁵¹ Therefore, “purposeful selection of participants represents a key decision point in qualitative study.”⁵² Creswell⁵³ recommended purposive sampling whereby researcher selects participants who can contribute to the understanding of the phenomenon for qualitative study. This is distinguished from quantitative study which aims to make claims about sample and generalize it to the whole population. Therefore, sampling must be representative of the population and also be randomly made,⁵⁴ as opposed to experience.

The researcher should create a list of key informants as possible participants for the interview. Once a pool of key informants is in place, the researcher would purposely select participants for interview. There are several strategies for purposeful selection of participants and documents. These include ‘maximum variation –diverse forms of experiences; homogenous sampling—same kind of experiences; extreme and deviant cases—experience which is typical of the phenomenon or deviant from it. Others are critical sampling—experiences which are significant to the phenomenon; criterion sampling—based on predetermined criteria considered to be relevant; theory-based sampling— experiences that contribute to theory development; and confirmatory sampling— experiences that confirm or disprove earlier

⁴⁷ D.E. Polkinghorne, D.E. Language and meaning: Data collection in qualitative research. (2005) *Journal of Counseling Psychology*, 52(2), 137- 145.

⁴⁸ Ibid, p.139).

⁴⁹ F.J. Wertz, Phenomenological research methods for counseling psychology. (2005) *of Counseling psychology*, 52(2), 167-177 p.171.

⁵⁰ Polkinghorne, supra, note 50 p.139)

⁵¹ Ibid

⁵² Creswell, supra, note 32 p.118).

⁵³ Creswell, Ibid,

⁵⁴ Polkinghorne, supra note 50

findings.⁵⁵ In addition, there is the informants' strategy which is used to get participants who can identify others with relevant information.

Sample Size

For a qualitative study the sample size is determined by the nature of the research questions being investigated and the "potential yield of findings".⁵⁶ The number of participants and actual sample size cannot be determined at the onset of the study. Wertz⁵⁷ suggested that participants should be recruited for information until the goal of the study is attained. In this case, the information reaches "saturation" point rendering additional findings redundant. Creswell recommended a large sample size where the outcome of a study is expected to be a theory, or model.⁵⁸

Gaining Access to Participants

Developing rapport and gaining access to participants is very crucial in the research process. In order to create rapport with prospective participants, the researcher should build trust, and let participants realize the importance of the study, and how gratifying the interview process might be for them.⁵⁹ In building trust, the researcher may personally communicate with prospective participants through telephone calls, personal contacts, letters or other appropriate media as the case may be. In these communications, the researcher should present himself/herself as a learner and colleague to build rapport. The researcher should explain the purpose of the study to participants and why they are being selected for the study. Participants should be assured of absolute anonymity and confidentiality throughout the study and thereafter. In terms of benefits, the researcher should explain to participants that since they are knowledgeable and or possess experience about the issues being studied, the study offered them the opportunity to publish their opinions and views on the issues. Also, it may be pointed out to them that their experiences would contribute to the understanding and effective management of the issues in the future. Any foreseeable risk in participation must be brought to their attention. Participants should be given the assurance that they could withdraw from the study at any time with no consequences and could stop the interview at will. Their consent must be

⁵⁵ Creswell, supra, 32.

⁵⁶ Wertz, supra, note 51 p.171).

⁵⁷ Ibid.

⁵⁸ Creswell, supra, 32

⁵⁹ Nachmias & Nachmias, supra, note 37

obtained before the interviews are conducted.⁶⁰ These measures are expected to build trust between the researcher and participants to provide access to required data.

3. *Data Collection*

Three data sets may be utilized for this study namely: interviews, documentary sources and the researcher's observational field notes. These data sets and procedures for data collection are discussed below in detail.

Interviews

Survey interview is one of the main sources of data collection in a qualitative study.⁶¹ Interview techniques could be individual or one-on-one, telephone, or focus group interviews. There could be the individual in-depth interview. This refers to "interviews that are conducted face to face with the respondent during which the subject matter of the interview is explored in detail."⁶² This *intensive interviewing* allows the researcher to solicit in-depth and detailed information on the phenomenon being studied, control the interview process for questions to be answered in an appropriate sequence or manner. Further, it allows for flexibility in the process to probe for details, clarify ambiguities and issues for appropriate responses, and collect supplementary data.⁶³ It is very appropriate if the phenomenon being studied is new, and the researcher requires accurate information to make the results useful. It also prevents the incident of groupthink which characterizes group interviews. It allows the researcher to probe to clarify ambiguities and observe body language to contextualize the data in the analysis stage, which will not be possible in a telephone interview⁶⁴

A disadvantage of the individual interview is that it is costly and time-consuming; and a researcher may not get detailed information where a participant is hesitant.⁶⁵ However, the richness of detailed information accrued from the individual interview far outweighs whatever

⁶⁰ Creswell, *supra*, note 32.

⁶¹ A.L. Hall, & R.C. Rist, Integrating multiple qualitative methods (or avoiding the precariousness of a one-legged stool). (1999) *Psychology & Marketing*, 16(4), 291-304; C.J. McReynolds, L.C. Koch, & Jr P.D. Rumril Qualitative research strategies in rehabilitation. (2001). *Work*, 16(1), 57-65; D.E. Polkinghorne, *supra*, note 50.

⁶² Aaker et al. as quoted in Hall & Rist, *Ibid*, p.298)

⁶³ Singleton & Straits, *supra*, note 33

⁶⁴ Hall & Rist, *supra*, note 63.

⁶⁵ Creswell, *supra*, note 32; Hall & Rist, *supra*, note 63 .

disadvantages may be associated with it. Where participants are made up of diverse sources of target participants, a group interview is considered inappropriate. This is because the target participants are not similar and the cooperation required for the group interview is not likely to occur among them.⁶⁶ With homogenous participants, however, group interviews may be feasible.

Interviews could be semi-structured with already prepared questions to focus on the research objectives and serve as a guide.⁶⁷ The researcher should prepare an interview protocol with open-ended questions for all categories of participants for the interview. In the course of the interview, questions may be adapted where necessary and depending on the particular participant category being interviewed. The open-ended questions will allow the researcher to reformulate the questions based on participants' responses and the category in a manner that will make it possible to solicit the detailed experiences of participants.⁶⁸ Thus the nature of questions should be participants-driven and not the other way round. The interview protocol should have spaces for the researcher to record responses to questions. Interviews should be recorded with a tape recorder or other similar device to preserve the information for safekeeping and later retrieval. However, where a participant is not comfortable with the recording, the researcher could go on with the interview, listen attentively and take down notes scrupulously. Immediately after the interview, the researcher may prepare an extensive *account* of it. Stake refers to this as "facsimile and interpretative commentary."⁶⁹

Documents

Another source of data is documents or available data. With available data, the researcher can make use of primary and secondary sources covering the subject matter of the study. Available data is utilized when the phenomenon being studied is a past event. In such a situation, Singleton and Straits recommend the use of available data as probably the most credible source

⁶⁶ Ibid.

⁶⁷ Goulding, *supra*, note 39; Singleton & Straits, *supra*, note 33.

⁶⁸ McReynolds, Koch, & Rumrill, Jr. *supra*, note 63.

⁶⁹ R. Stake, *The art of case studies research*. Thousand Oaks, CA: Sage (1995).

of information, as the memory of those who experienced the phenomenon may have been weakened with the passage of time.⁷⁰

Singleton and Straits identified five main sources of available data as public documents, mass media, personal or private documents, non-verbal and archival sources.⁷¹ Available data gathered for the study should be listed. These documents should be collated, analyzed and reviewed to ascertain an understanding of what is being studied.

Observational Field Notes

In addition to the interviews and documentary sources, the researcher should keep a journal to record daily summaries of field observations during the period of the study. These notes will form part of the analysis and findings. Creswell, McReynolds et al., and Merriam identified observational field notes as a credible source of data.⁷² According to Merriam field notes “are analogous to the interview transcript.”⁷³ Throughout the study the researcher should observe the physical surroundings of the phenomenon being studied and note down the observations made. Also, the demeanor of participants should be noted during interviews and written down in a scanty form. After the interviews, the researcher should write out the notes fully as recommended by Merriam.

4. Method of Data Analysis

This section discusses the methods that can be used by the researcher to analyse the qualitative data. These include data management, analysis and representation discussed below.

Data Management, Analysis, and Representation

Within the qualitative research paradigm, data analysis technically commences with the start of data collection.⁷⁴ The researcher could utilize the data analysis procedures recommended by

⁷⁰ Singleton and Straits, *supra*, note 33

⁷¹ *Ibid.*

⁷² Creswell, *supra*, note 32; McReynolds et al. *supra*, note 63; and S. B. Merriam, *Qualitative research and case study applications in education*. United States of America: Jossey-Bass (1998).

⁷³ Merriam, *Ibid.*

⁷⁴ Goulding, *supra*, note 39.

Creswell and Stake.⁷⁵ These step-by-step procedures are data management; reading and memoing; description, classification and interpretation; and representation.

In the first stage, the researcher has to manage the data. Due to the volumes of data gathered, the researcher has to develop a list of all data collected. Data are then organized into files according to subjects and then placed in folders. The researcher should develop systematic codes by the use of letters and numbers to represent the subjects as locators for easy retrieval and analysis.⁷⁶

In the second stage the researcher should read the entire material, namely transcripts from interviews, documents, and field notes several times until he/she becomes immersed in it to make sense of the entire data. Creswell referred to this second step as “reading and memoing.”⁷⁷ In the course of reading, the researcher may make reflective notes at the margin of the records and document initial findings in the form of a memo. These are “short phrases, ideas, or key concepts that occur to the reader”⁷⁸ Initial codes are developed and preliminary findings sent to selected participants for their comments. In developing the codes, the researcher should use the *constant comparative* approach. By this approach, the researcher reads all the data over and over again for new insights until it is saturated—no additional meaning or insight emerges. The researcher should then develop initial codes. These are ideas derived from the data in abstraction through the iterative process. The initial codes are further regrouped with similar ideas combined to form categories. The categories and codes “compared and contrasted” to develop new insights to form additional codes. This is done until the data is saturated. Categories are applied to the research questions to provide understanding of what is being studied.

The third stage deals with data analysis in earnest. It involves description, classification, and interpretation of the data.⁷⁹ According to Creswell, the qualitative researcher at this stage follows a systematic procedure to describe what is seen in the data, develops categories and themes, interprets the emerging themes and constructs, and makes assertions and conclusions from the data based on “hunches, insights, intuition, an interpretation within social sciences

⁷⁵ Creswell, *supra*, note 32; and Stake *supra*, note 71

⁷⁶ *Ibid.*,

⁷⁷ *Ibid.* p.143

⁷⁸ *Ibid.* p.144).

⁷⁹ *Ibid.*

constructs or ideas or a combination of personal views as *contrasted* with a social science construct or idea.”⁸⁰ It should be noted that for an interdisciplinary legal research, the emerging themes could be interpreted by legal constructs or norms or concepts that frame the study. The researcher could interpret the data, make assertions and conclusions based on “insights” to contribute to the understanding of the phenomenon being studied and also for the application of the lessons derived from it.⁸¹

The fourth stage in the data analysis involves packaging and presenting what is found in the data in a form of a matrix or figure to make the analysis open. The Anfara, Brown, and Mangione Iterative Code Mapping figure⁸² could be used to show how the initial codes are built into categories and applied to research questions to form emerging themes. Also, Constas’ “documentational table for the development of categories”⁸³ could be used to present how categories are developed and make the analysis an open process. Constas argued that a major shortfall or criticism of the qualitative process is the subjectivity and the private nature of data analysis. In order to ensure trustworthiness of qualitative findings it becomes imperative to make the process of analysis a “public event.” To achieve this, Constas proposed a two-dimensional model to document category development. This consists of a table with a “component of categorization” and “temporal designation.” The first dimension reports on actions taken to develop a category i.e., the source of “authority for creating a category”, the basis for justifying a category and identification of the source of the name utilized for it. The second dimension reports on the various stages of the research process when a category was developed namely a priori—before data collection; a posteriori—after data collection, iterative—any point during data collection. Presenting a matrix of category development will bring the process into public domain and enhance the credibility of findings. These processes will provide a detailed account of how the findings on contexts and dynamics of the phenomenon(a) were arrived at.

⁸⁰ Creswell, *supra*, note 32, p.145.

⁸¹ *Ibid.*

⁸² A. E. Buehler, *A case study of successful small school reform: The Construction academy as a fundamentally different enterprise*. Unpublished doctoral dissertation, University of Tennessee, Knoxville (2006). p.67

⁸³ A. M. Constas, Qualitative analysis as public event: The documentation of category development procedures, (1992) *American Educational Research Journal*, 29(2), pp253-266 at 262.

5. *Issues of Quality and Ethics*

There is no single acceptable way of validating qualitative findings. But that does not mean a qualitative study cannot be authenticated.⁸⁴ According to Creswell, establishing quality standards in a qualitative study differs from standard procedures in quantitative research in terms of definition and procedures. Creswell pointed out that some researchers in the qualitative tradition have sought to establish “*qualitative equivalents that parallel traditional quantitative approaches to validity*”⁸⁵ in order to facilitate the acceptance of qualitative research. Ely et al.⁸⁶ insist that the language of quantitative research grounded in the positivist tradition does not fit in the qualitative research paradigm. McReynolds et al.⁸⁷ also maintain that “reliability” and “validity” within the context of the qualitative tradition do not have the same meaning as they do in quantitative research. They pointed out that terms like “credibility”, “trustworthiness” and “authenticity” are used instead of reliability and validity. Creswell⁸⁸ used verification for validity in order to ground qualitative research as a distinct methodological approach for research. Richardson⁸⁹ pointed out that in qualitative study, “validity is not the triangle— a rigid, fixed, two-dimensional object” but a process resembling “crystallization.” Guba and Lincoln⁹⁰ advocate that qualitative findings should be validated through the processes of credibility, transferability, dependability, and confirmability.

The requirement of credibility insists that a qualitative researcher should establish that the findings arrived at are in consonance with participants’ perspectives and beliefs. Since the essence of a qualitative study is to describe the phenomenon of study from the point of view of

⁸⁴ N. Fielding, Getting the most from archived qualitative data: Epistemological, practical and professional obstacles. (2004) *Social Research Methodology*, 7(1), 97- 104.

⁸⁵ Creswell, supra, note 32 p.197.

⁸⁶ as cited in Creswell, supra, note 32.

⁸⁷ McReynolds et al, supra, note 63.

⁸⁸ Creswell, supra, note 32.

⁸⁹ as cited in Leisner, A.T. Leisner, *The Role of private-sector participation on Florida regional workforce: A narrative inquiry*. Unpublished Dissertation. Walden University, Minneapolis (2005). p.60

⁹⁰ as cited in Trochim, supra, note 41.

those who experienced it. Transferability requires the researcher to provide detailed characteristics of what was studied. This will allow for external assessment to be made as to whether the findings could be transferred elsewhere. The researcher does not make that decision but has to provide information to make such assessment possible. Dependability raises the duty on the part of the researcher to indicate and report on the changing contexts of the study and how the changes affect the findings. Finally, the process of confirmability requires the researcher to document procedures adopted to corroborate and confirm the findings⁹¹.

Acceptable measures recommended by authors for fulfilling the aforesaid include field notes and memos, the use of multiple sources of data, peer review or debriefing, prolonged engagement and persistent observation in the field, working with discrepant data, clarifying researcher's bias, member checking, providing rich thick description, and external audit.⁹² Creswell recommended that at least any two of these strategies should be used to assess the quality of qualitative findings.⁹³

6. Participants' Protection

Participants' protection is critical to the success of the study. To ensure participants' protection, they should be recruited upon a voluntary consent. The purpose of the study and how the interview would be used should be explained to them. Participants should be given the assurance that they could back out of the study at any time and at will. The researcher should make this known to participants before seeking their consent to participate. Before the interview commences, participants should be informed that they could stop the interview at any time without any consequences if they considered it necessary to do so. Further, participants should be assured of anonymity and confidentiality throughout and after the study. The identity of participants should be hidden and detached from information by the use of codes. The information they provide should be kept confidential under a lock. Participants' privacy must be respected and they should be allowed to indicate where and when they would have the interview. These are some of the measures recommended for securing the protection of participants.⁹⁴

⁹¹ Ibid..

⁹² Creswell, supra note 32; McReynolds et al. supra, note 63..

⁹³ Creswell Ibid.

⁹⁴ Creswell, supra, note 32; Goulding, supra note 39; Nachmias & Nachmias, supra note 37).

7. *The Researcher's Role*

The researcher should report on his or her role carried in the the entire research from the stages of data collection, data analysis, and report writing. For example, the fact that the researcher may personally recruit participants and seek the necessary consent and permission to conduct interviews and collect documents; the researcher may use emails, telephone and letters to contact participants as the case may be. In some cases the researcher may have to make personal contact to introduce the topic. Other roles include the researcher personally conducting, audio taping, and transcribing interviews proceedings. In the course of interviews, the researcher may write down memos/notes which are later used to aid in the analysis, and also prepare the narrative reports. All these roles should be reported on. In essence, the researcher is the instrument of data collection as characterized by a qualitative case study of this nature.⁹⁵

A qualitative researcher should be skilful with a great deal of practice in interviewing in order to obtain relevant data required for a study.⁹⁶ The researcher should indicate his/her expertise or experiences that made it possible to undertake the tasks assigned under the study.

8. *Dealing with the Researcher's Bias*

The role of the researcher as the main instrument for data collection puts the person in close contact with the data. The likelihood of a qualitative researcher being tainted with bias in that context should be recognized.⁹⁷ Several measures could be observed by the researcher to deal with the possibility of subjectivity. Specifically, the researcher should maintain a high degree of consciousness about the possibility of bias and exercise objectivity throughout the process. The researcher should report any discrepant incident in the course of the study. As noted earlier, research findings could be subjected to member checking and peer review to enhance the credibility of the research findings.⁹⁸ A stakeholder could be made to review the interview transcripts, findings and recommendations and his or her feedback incorporated in the report. Preliminary findings should be shared with selected participants, and their comments incorporated into the report. Again, using multiple sources of data to collaborate findings will

⁹⁵ Creswell, *Ibid*; Goulding, *Ibid*..

⁹⁶ Goulding, *Ibid*.; Polkinghorne, *supra*, note 49.

⁹⁷ Goulding, *Ibid*. 2002.

⁹⁸ Goulding, *supra*, note 39..

enhance the credibility of research outcomes. Finally, the researcher should document the process of category development⁹⁹ and make the process of data analysis open to enhance the trustworthiness of findings. These measures hopefully will minimize or eliminate the incidence of the researcher's subjectivity.

At the end of this section, the researcher should be holding the non-law data and or findings which should be merged together with the legal findings for the narrative report of the study as shown next.

IV. PUTTING TOGETHER AND ANALYSING THE LEGAL AND NON-LEGAL FINDINGS FOR THE REPORT

A. The Structure of the report

At this stage the researcher is seized with findings from both law and non-legal sources which should be merged together into a report. The findings could be merged and presented through the realist tradition as recommended by Creswell, for a qualitative case study narrative, for example. By the realist approach, researcher should provide a detailed description with quotes from informants as well as an interpretation within the framework of the conceptual framework of the study as well as the researcher's intellectual insights. The researcher should write with multiple audiences in mind in order to be heard and understood. Words, rhetoric, visuals and diagrams could be employed for the narration in such a way as to generate readers' interest and sustain the significance of the work. Basically, matters involving the structure should be left "to writers to decide"¹⁰⁰ Concerning the narrative structure, the researcher should be guided by the objective of the study: to provide a deeper understanding of what is being studied. The strength of the research is in its in-depth and detailed analysis of the phenomenon to fill the gap in the existing literature for example.

The legal materials should serve as a foundation upon which the non-law materials are built since it is a legal study being undertaken. The non-legal materials should be weaved on it

⁹⁹ Constas, *supra*, note 85; V.A. Anfara, K.M.Brown, & T.L.Mangione, . Qualitative analysis on stage: Making research process more public. (200) *Educational Researcher*, 31(7), 28-38.

¹⁰⁰ Merriam. *Supra*, note 73, at 188.

through four main approaches termed as confirmatory findings, divergent findings, explanatory findings and isolated or stand-alone findings.

A. Confirmatory findings

Confirmatory findings refer to findings from the law and non-law data which confirm or corroborate each other. The researcher should develop themes for same ideas emerging from both the law and non-law materials under a heading. Here they corroborate and confirm each other. For example, the report should indicate what emerged from the law data and indicate how the non-law data confirms it.

B. Divergent, and incongruent-findings

Conflicting and incongruent findings refers to findings from the two sources which are contradictory to each other. This part should report on conflicting findings emerging on issues between the law and non-legal data. The legal findings should be reported and the divergent non-law data finding should be reported and contrasted from the law findings. The finding should be interpreted based on the conceptual framework that underpins the study.

C. Explanatory findings

These findings may be such as one set of findings may give explanation to another set of findings. The non-law data may explain how the law is faring in action. The narration should be done to that effect.

D. Isolated or Stand-Alone Findings

The Isolated or Stand-Alone findings refers to data findings from two categories of law and non-law sources which are not related in anyway. Findings from the law should be reported to stand on their own. Likewise, where findings from the two sets of data are not related in anyway, they should each be reported to stand under a theme to form part of the narrative report.

VI. CONCLUSION AND RECOMMENDATIONS

Methodology is key to an interdisciplinary legal research study. Accordingly, this paper sought to propose a step-by-step methodology for interdisciplinary legal research studies using the touchstone of the social science qualitative research paradigm. The paper framed the doctrinal legal research methodology as a starting point to determine the state of the law on the issues or

the legal questions for the study. This is followed by the examination of the issues with social bearings through the social science qualitative paradigm. The researcher may opt for the quantitative paradigm under an appropriate circumstance. With findings from the law and non-law data at hand, the two sets of findings could be merged through the processes of confirmatory, divergent, explanatory, and stand-alone vehicles. It is hoped that the paper will be found useful to legal scholars, judges, law students and others in their quest to undertake a research in the law ands.