



NIGERIAN LAW IN CONTEXT

FESTSCHRIFT IN HONOUR OF
HON. JUSTICE PAUL OBI ELECHI, JCA

EDITED BY PROF. AMARI OMAKA, SAN

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Festschrift in Honour of Justice Paul Obi Elechi, JCA

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Chapter 14

LEGAL RESEARCH AND TEACHING METHODS IN THE 21ST CENTURY

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Prelude

Traditional teaching methods emphasize the view that the system should be to look at the whole teaching process and emphasize the separate roles of teachers and students. At present, the teaching method is transforming with lots of progress in science and technology leading to changes in the make-up of both teachers and students. On the other hand, the law is influenced by the prevailing values and ethos. Research is a continuum and the research on systemic teaching methods has attracted much attention in the academia. Research and teaching of law disciplines require the use of the best approach to impart the legal theories, principles, applications, and practices, all geared toward making law students think like Lawyers. Adopting the doctrinal method of research, this section, therefore, examines legal research and teaching methods and raises the crucial thought of 'continuity and

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change' of the traditional methods of research and teaching of law. It was found out that the traditional teaching method requires a revolution in order to reach the teaching goal. This requires the acceptance of the fact that certain trends have emerged necessitating a shift from some of the traditional methods. However, there would be the need to further embrace any method that is still viable. It is recommended apriori that teaching of law should essentially be interpersonal to enable both the teacher and the students to interact effectively. It concludes that any method that matches the learning style and better suits the subject area and students' interests should be considered an innovative method for research and teaching of law.

1.1 Introduction

According to Francis Bacon, 'reading makes a full man; speaking a ready man; writing an exact man.'¹ These three closely interrelated actions of reading, speaking, and writing are at the core of modern academic research and the dissemination of knowledge and learning i.e., teaching. Research and teaching involve the detailed study of a subject area to discover new information and impart knowledge. Both teachers and students are involved in the acts of research and teaching. The skills of research and teaching are the same in all disciplines but methodologies may vary. While research may be personal, by either the teacher or the student, teaching should essentially be interpersonal to enable both the teacher and the students to interact effectively. Also, the environment and overall competence have a great influence on the effects of research and teaching methods. Hence, there is a need to consider the specific environment in which teachers and students find themselves and the overall competence that they have.

In most cases, the use of teaching and research methods cannot be said to be mutually exclusive, in the sense that, any two or more of the methods may be adopted in a particular research or for teaching a particular set of students. What is important is that the appropriate one is adopted considering the interest and learning style of the students, or the nature of the research, as the case may be. In a class of one hundred and fifty students, about fifty of them may not be

¹ Pinterest, F Bacon (2015) <pininterest.com> accessed on 31 August 2021.

amenable to the use traditional lecture method of teaching, perhaps seminar or Socratic or clinical method serves them better. It is to solve the problem that may be created under this scenario that the Researchers came up with this crucial thought of 'continuity and change' in the use of teaching methods. In any event, 'there are no universally accepted ways to distinguish good and bad among the teaching methods. The important thing is to change and be flexible based on the specific circumstances and to choose the most suited way.'²

On the other hand, almost all research in law is carried out by means of the doctrinal research method. Experience has shown that not all researches in law are completely prone to the doctrinal method of research since some components of the research topic may have to be resolved using a non-doctrinal approach. That being the case, while traditional research and teaching methods cannot be ruled out, it is required that researchers and teachers should be very liberal to accommodate necessary changes in order to bring out the best result in their research and at the same time accomplish the main task of producing students who think like lawyers by using suitable teaching methods.

In order to achieve the target of this work, it hereunder discusses legal research and teaching of law with their definitions and types, after which the study shows the finding, recommendations, and conclusion.

1.2 Legal Research and Teaching of Law

Legal research and teaching of law disciplines have to do with discovering new areas in law and imparting the knowledge of same. Research and teaching of law disciplines have become complex, requiring that the linkages between the contents and methods of research and teaching must be duly recognised and analysed. The law teacher must know the kinds of research methods and their applications, in order to collate and analyse the relevant data for effective delivery. Some of these innovative methods of research and teaching of law are hereunder discussed.

² W Cheng & H Jiang, *The Innovative Research of Teaching Methods on Higher Education of Management Discipline* (2012) < https://link.springer.com/chapter/10.1007/978-3-642-11276-8_45 > accessed on 19 August 2021.

1.2.1 Legal Research Methods³

The term, research is derived from the French word, *recherche*, which means, to search or look for something closely. According to Umahi and Akpogheme in their work, 'Mapping the Contours of Legal Research Writing and Documentation in Nigeria'⁴

... research is a systematic search or scientific investigation or diligent and systematic inquiry or investigation into a factual or theoretical subject in order to discover or revise facts, theories and applications. Research is a systematic investigation that involves standardized procedures in search of knowledge. Every researcher must bear in mind that research involves 'planning, investigation, observation, and analysing factual data or theoretical concepts with a degree of originality, creative ability and power'.

To Vibhute and Aynalem,

'Research', in simple terms, can be defined as 'systematic investigation towards increasing the source of human knowledge' and as a process of identifying and investigating a 'fact' or a 'process' with a view to acquiring an insight into it or finding an apt solution therefor. An approach becomes

³ Research method should be distinguished from research methodology. Research method refers to all those methods and techniques that are used by a researcher in conducting his research such as collecting and processing data, establishing the relationship between the data and unknown facts and evaluating the accuracy of the results obtained. Research methodology, on the other hand, refers to a 'way to systematically solve' the research problem, which may be understood as the 'science of studying how research is done scientifically' and it involves a study of various steps and methods that a researcher needs generally to adopt in his investigation of a research problem along with the logic behind them. See, K Vibhute & F Aynalem, *Legal Research Methods Teaching Material*, prepared under the sponsorship of the Justice and Legal System Research Institute, 2009 <chilot.files.wordpress.com> accessed on 25 August 2021.

⁴ OT Umahi and TU Akpogheme, *Mapping the Contours of Legal Research Writing and Documentation in Nigeria* (University of Nigeria Press Ltd 2013) 5.

systematic when a researcher follows certain scientific methods. In this context, legal research may be defined as 'systematic' finding law on a particular point and making advancement in the science of law. However, the finding law is not so easy. It involves a systematic search of legal materials, statutory and judicial pronouncements. For making advancement in the science of law, one needs to go into the 'underlying principles or reasons of the law'. These activities warrant a systematic approach.⁵

Going further, Vibhute and Aynalem, quoting five different sources, noted that,

The term 'research' has received a number of varied meanings and explanations. In its ordinary sense, the term refers to search for knowledge. *The Advanced Learner's Dictionary of Current English* spells out the meaning of 'research' as 'a careful investigation or inquiry specifically through search for new facts in any branch of knowledge. Redman and Mory, in a similar tone define research as a 'systematized effort to gain new knowledge'. According to *Webster's International Dictionary*, research is a 'careful, critical inquiry or explanation in seeking facts or principles; diligent investigation in order to ascertain something'. While *Webster Dictionary* explains the term, 'research' to mean a systematic investigation towards increasing the sum of knowledge.' D Slesinger and M Stephenson perceived the term 'research' as the manipulation of things, concepts or symbols for the purpose of generalizing to extend, correct or verify knowledge, whether that knowledge aids in construction of theory or in practice of an art.⁶

In the words of Rajkumari Agrawala, 'research is a continuum', 'research is the gathering of evidence or information for ascertaining an

⁵ K Vibhute and F Aynalem, *Legal Research Methods Teaching Material*, prepared under the sponsorship of the Justice and Legal System Research Institute, 2009 <chilot.files.wordpress.com> accessed on 25 August 2021.

⁶ *Ibid.*

assumption or verifying some hypothesis, ... an inquiry for verification of fresh theory or for supplementing prevailing theories by new knowledge.⁷ From the foregoing, legal research boils down to adopting a systematic approach to discovering new ideas in law while considering closely the existing ideas. It is a step further from the known ideas in law which uncover the ideas in law that were unknown before. It takes into its ambit a systematic finding or ascertaining law on the identified topic or in the given area as well as an inquiry into law with a view to making advancements in the science of law.⁸ The methodology is the study of not only of the methods but also the explanation and justification for adopting certain research methods, as well as the philosophy and practice of the entire research process.⁹ The methods that are adopted in legal research are basically two, namely: doctrinal and non-doctrinal methods. Another method is the teleological research method which is neither doctrinal nor non-doctrinal because it does not involve fieldwork and may not involve visiting the library but it has a particular difference as shall be seen below. These methods are, however, not mutually exclusive.

1.2.1.1 Teleological Research Method

According to Aboki, 'This is a research method where the searcher uses his experience to arrive at a definite finding.'¹⁰ In this type of research, knowledge is shared through the experience of the searcher. The experience may have been acquired in the course of the employment or services rendered by the searcher. For instance, a former President, Governor, Minister, Commissioner, Permanent Secretary, or Director can use the experience he acquired during his term or tenure of office to write a book, project, or article. Autobiographical books are mostly written by means of the teleological research method. Most Teachers also write books and articles based on their

⁷ R Agrawala, 'Indian Legal Research: An Evolutionary and Perspective Analysis', *JILI* (1982) 24 – 47.

⁸ K Vibhute and F Aynalem, *Legal Research Methods Teaching Material*, prepared under the sponsorship of the Justice and Legal System Research Institute, 2009 <chilot.files.wordpress.com> accessed on 25 August 2021.

⁹ *Ibid.*

¹⁰ Y Aboki, *Introduction to Legal Research Methodology: A Guide for Writing Long Essays, Theses, Dissertations and Articles* (3rd edn, Ajiba Printing Production, Kaduna 2013) 3.

experience in the classroom; students too, write and present field trip reports based on their experience throughout the trip - all these are carried out through the teleological research method. One distinct feature of this research method is that you may not necessarily go to the library or the field to obtain data or information, the researcher more or less uses his personal experience to pass information, make his findings, or draw a conclusion.

1. 2. 1. 2 Doctrinal Research Method

This means, theorizing without considering the practical consequences. In other words, a researcher pays excessive attention to theory as opposed to practice.¹¹ This method of research does not involve fieldwork, the legal researcher only goes to the library and consults textbooks, statutes, and cases. With those materials, he engages in the visualisation, imagination, examination, and analyses of the concept or of the area under study by him, without going to the field. It is for this reason, this method of research is also called imaginative research, visualised research, conceptual research, visionary research, or unpractical research.

Doctrinal research is library-based research. There are two sources of materials for this method of research, including primary and secondary sources. The primary source is the fundamental document with the highest authority and such documents include legislations¹², case laws¹³, treaties¹⁴, decisions of government agencies that have formal adversarial hearings¹⁵. On the other hand, secondary source emanates from writings of Legal Scholars or Teachers describing, interpreting, analysing, and criticizing the law. Such writings are not sources of law, in a strict sense. Thus, an opinion of a Legal Scholar, no matter how authoritative, cannot be rated as a document of primary authority, whereas a law made by a legislative authority, no matter how low, is a

¹¹ Ibid.

¹² Such as the Constitution, Acts of the National Assembly, Laws of the State House of Assembly, Bye-Laws of the Local Government, Decrees and Edicts of the Military Government.

¹³ Judgments or decisions of the Courts.

¹⁴ International Agreements.

¹⁵ For example, decisions of the Code of Conduct Bureau, Failed Banks Tribunal, Rent Control Tribunal, Election Petition Tribunal, etc.

document of primary authority.¹⁶ However, secondary sources may not be authoritative but may provide means of finding the primary sources of legal authorities and explaining them.

1. 2. 1. 3 Non-Doctrinal Research Method

Non-doctrinal legal research is a statistical and empirical research involving the collection of data from the field which are subjected to examination and analysis or experiment in order to answer research questions. This type of research method primarily employs methods taken from other disciplines. So, it is basically unusual to legal researchers but when issues of law involve matters drawn from other disciplines, legal researchers utilise the methodology to help them effectively solve the research questions. It is also, called empirical research or socio-legal research, or field-oriented method of research.

This method of research was introduced to legal research by researchers from pure science-based courses, where information is collected outside and analysed in laboratories. In the same vein, some lawyers also believe that information about law could be collected outside and analysed in a library, office, or chambers.¹⁷ The primary sources here include observation, focus group discussion, interviews, and questionnaires, whereas, secondary sources remain text books, journals, newspapers, reviews, dictionaries, etc. Non-doctrinal research serves very useful purpose in the sense that:

- a. It tries to find out the impact of non-legal events upon the legal decision,
- b. It seeks to identify and appraise the degree of variables that influence the outcome, and
- c. It tries to find out the effect of each decision on people and society as such.¹⁸

¹⁶ Y Aboki, *Introduction to Legal Research Methodology: A Guide for Writing Long Essays, Theses, Dissertations and Articles*, op cit, 17.

¹⁷ *Ibid*, 2 – 3,

¹⁸ See generally, AO Alubo & MY Danung, *Contemporary Legal Research Methodology for Nigerian Universities* (2nd edn, Jos University Press, Jos, Nigeria 2018) 33.

1.2.2 Teaching Methods¹⁹

'The mediocre teacher tells. The good teacher explains. The superior teacher demonstrates. The great teacher inspires.'²⁰ The efforts of a law teacher should adequately be geared towards making the students to think and act like lawyers. In order to achieve this, the teaching of law disciplines should be context-based and adequately accommodate the learning style, habits, and other relevant antecedents of the students. The effectiveness of teaching depends on the learning habits of students. Therefore, a teaching style can only be developed after a deeper understanding of the learning style, habits, and other relevant antecedents of the students.²¹ The five components of effective instruction²² should also be applied and matched with the best method suitable for teaching the subject. The need of teaching law inclines toward innovative methods of research and teaching of law disciplines. Some of these innovative teaching methods are discussed hereunder.

1.2.2.1 Lecture Method

This method involves a continuing oral presentation of information and ideas by the teacher; it is presumably a synthesis of his own reading, research and experiences, interpreted in the light of his own insights.²³ Under this method, there is little or no active participation by the students. Nevertheless, good use of the lecture method produces the following results:²⁴

¹⁹ See generally, J Badamasiuy, KU Eze & BM Bashir, Re: Innovative and New Methods in Research and Teaching of Law Disciplines, Proceedings of the Conference of Nigerian Association of Law Teachers (NALT) Ibadan, Nigeria, 2019.

²⁰ WA Ward, *Fountains of Faith*. Cited in, Society of St Paul, *God's Word Daily Reflections* (St Paul Publication, Ibadan, Nigeria 2021).

²¹ GS Bajpai & N Kapur, 'Innovative Teaching Pedagogies in Law: A Critical Analysis of Methods and Tools' (2018) (2) *Contemporary Law Review*, 92.

²² Components of Effective Instruction: 1. Enthusiasm – the teacher must have the zeal for teaching. 2. Preparation and organisation – the teacher must prepare in advance and organise his materials for teaching. 3. Stimulating students thought and interest – what the teacher offers to the students must be thoughtful as to stimulate their interests. 4. Explaining clearly – whatever is taught must be comprehensible. 5. Knowledge and love of content.

²³ *Ibid*, p. 99.

²⁴ See generally, R Latessa, & D Mouw, 'Use of an Audience Response System to Augment Interactive Learning, Innovations in Family Medicine Education' (2005) 37: 12 – 4. Cited in: GS Bajpai & N

- a. Empowers the audience and keeps them focused;
- b. Inspires people and engages them;
- c. Moves the audience and makes them more willing to learn about the topics discussed;
- d. Provides new insight and stimulates thinking and analysis;
- e. Makes people think and motivates them to develop new skills;
- f. Gives the audience the desire to listen to it again and again.

1.2.2.2 Socratic Method

The Socratic method of teaching is a grouped argumentative discussion between individual members of the groups anchored on questions and answers stimulating critical thinking and leading to new ideas. The Socratic method of teaching provides an avenue for students to speak in public and exposes the students to legal analytical thinking through lawyers' adversary style of exchange of arguments. Other benefits of this method are that: first, it gives the law teacher the capacity to teach large bodies of students in an active manner; secondly, it is instrumental in teaching law students to think like lawyers; thirdly, it helps students to develop their verbal skill.²⁵ Suffice it to say that the Socratic method is quite innovative and therefore, very appropriate for the teaching of law disciplines since it is geared towards cognitive skill development, that is, making the students think like lawyers, which is the basic task of legal education.

1.2.2.3 Clinical Method

This method is also known as clinical legal education. It is a method by which students are taught through role-playing, simulations, brainstorming, highly interactive discussions, regular in-depth feedback, and direct client

Kapur, 'Innovative Teaching Pedagogies in Law: A Critical Analysis of Methods and Tools'

(2) *Contemporary Law Review*, 91 - 92.

²⁵ B Lowell, 'The Socratic Method as a Pedagogical Method in Legal Education', University of Wollongong, Australia. Cited in: GS Bajpai & N Kapur, 'Innovative Teaching Pedagogies in Law: A Critical Analysis of Methods and Tools' (2) *Contemporary Law Review*, 100.

representation.²⁶ The goal is to create a scenario that suits the topic by pretending that it is real life. One major advantage of role-playing and simulation is the possibility to encourage evaluation and synthesis of the subject matter while practically taking students out of their chairs and allowing them to learn it by doing it. It is, however, the role of the teacher to explain to the students that it is not (only) fun but an opportunity for the students to participate actively in the learning process.

In legal education, this method can come by way of a moot court exercise, building up a negotiation strategy, observing the conclusion of a contract, alternative dispute resolution role-playing, etc., which are appropriate to develop the argumentation and text analysing and research skills of the students that they would definitely need in their professional life.²⁷ The skills that the clinical method aims to build include interviewing, fact investigation, an extensive application of problem-solving skills, attorney-client relations, negotiation, and other alternative dispute resolution methods, ethical considerations, and pre-trial and trial skills.²⁸

1. 2. 2. 4 Case Method

In case method, the students are exposed to the judgments of courts to read and decipher the *ratio decidendi* and *obiter dicta*, and thereby analyse, interpret and arrive at their own conclusion on the meaning and dictates of the court judgment. Under this method, court judgments constitute the primary learning material. This method enables students to understand legal principles on their own through carefully framed questions. Therefore, students are expected to be prepared for class in advance by reading the assigned materials like case opinions, notes, law review articles, etc., and by familiarizing

²⁶ B Margaret, 'Clinical Legal Education in the Law University: Goals and Challenges' *International Journal of Clinical Legal Education* (2007) (2). Cited in: GS Bajpai & N Kapur, 'Innovative Teaching Pedagogies in Law: A Critical Analysis of Methods and Tools' (2) *Contemporary Law Review*, 101.

²⁷ RG Manuela, 'The Role of Innovative Teaching and Learning Methods in Legal Education' Eotvos Lorand University of Sciences (Hungary).

²⁸ GS Bajpai & N Kapur, 'Innovative Teaching Pedagogies in Law: A Critical Analysis of Methods and Tools' (2) *Contemporary Law Review*, 101.

themselves with general outlines of the subject matter. The students have to review the cases analysed in class. From these materials, he tries to construct an orderly statement of the legal rules and principles in the course's field. The student learns the rules and principles developed by courts and learns to relate those rules to legal doctrines and facts and vice-versa.²⁹

1. 2. 2. 5 Collaborative Method

This method deals with the students coming together as a team to share ideas through interaction with each other whereby there is an exchange of viewpoints on a particular topic or subject area under the guidance of the teacher. It enables the students to get closer as an academic team for carrying out group projects and academic discussions. This process is more effective than individualistic learning as it enables the students to develop and achieve a broader spectrum of cognitive, affective, and interpersonal goals.

Under the collaborative method, students actively participate in the learning process by interacting with each other and listening to others' points of view. It establishes a personal connection between students and the topic of study and helps them to think in a less personally biased way. Group projects and discussions are examples of this teaching method. Teachers may employ collaboration to assess students' abilities to work as a team, leadership skills, or presentation abilities.³⁰ By the same token, students at this stage begin to familiarize themselves with the important act of teamwork through a competitive exchange of viable ideas to produce stronger points in their academic assignments.

1. 2. 2. 6 Problem Method

The problem method is often used as a major alternative to the case method of teaching. It can be defined as a method that uses hypothetical fact situations as the centrepiece for student analyses and discussions. The problem typically presents plausible situations of varying detail and complexity. Students then select a course of conduct or predict a court's decision based on

²⁹ *Ibid*, p. 96.

³⁰ *Ibid*, p. 98.

a variety of legal and non-legal materials either provided to the students or readily available to them.³¹ The merit of the problem method is that it compels the law students to reflect on the application of pertinent materials to new situations and accustoms them to thinking of cases and statutory laws as something to be used, rather than as something merely to be assimilated for its own sake.³²

1. 2. 2. 7 Seminar Method

The seminar method is an organised system of learning through paper presentation by an individual student or group, which presentation is normally subjected to discussion or reactions from the audience. Thus, after the presentation, it is analysed and discussed to agree on a particular point or issue. The presenter is expected to reflect on the valuable discussions and contributions made by the audience in the final result of the work. This method is a style of teaching for advanced learning, usually at the postgraduate level. This does not, however, make it 'out of bound' for undergraduate learning, much as it encourages interaction among learners and learned.

1. 3 Recommendations and Conclusion

The appearance of a great teacher has a decisive effect on the development of the scholars, both by extending the scope of the subject studied, that is, curriculum development, and changing the methods of study, that is, methodology of instruction, and by attracting a great number of students and getting accustomed to their learning style and interest. Thus, the aim of innovative teaching and learning methods is to translate the enthusiasm for teaching into students' enthusiasm to learn.

Based on the foregoing, the traditional teaching method requires a revolution in order to reach the teaching goal. This requires the acceptance of the fact that certain trends have emerged necessitating a shift from some of the traditional methods. However, there would be the need to further embrace any method that is still viable in terms of the learning style of the students. In this regard, the teaching of law should essentially be interpersonal to enable both the teacher and the students to interact effectively. It is, therefore, submitted

³¹ *Ibid*, p. 96.

³² *Ibid*, p. 97.

that the above discussed research and teaching methods are still viable when used along with the learning style of the students, even if it means splitting the class to apply a matching method to each group.

The teaching method in essence demands a high combination of the teaching activities by teachers and learning activities by students to achieve the optimal effect of teaching, which doesn't mean the independent instruction of teachers or the independent study of students, but how those elements when combined perfectly could realise the teaching goal.