



COURSE IN LEGAL RESEARCH METHOD
FACULTY OF LAW
UNIVERSITY OF OXFORD

2016-17

A Guide to the Course in Legal Research Method

This handout provides guidance to those doing the Course in Legal Research Method (CLRM) course in 2016-17. The course (or one of the recognised variations on it) is compulsory for all first year research students (PRS, MPhil, MSt).

The course serves three functions. First, it is an important aid to help students develop skills in legal research and methodology. Second, the course exposes students to the diversity of and intellectual challenges involved in great legal scholarship. Third, and most importantly, the course is a forum of peers in which research students can discuss the methodological challenges involved in their own research. As such, the course requires students to think critically and to work together as part of a community committed to producing legal scholarship of the highest quality.

This guide is divided into five sections:

1. A formal description of the course and what it entails.
2. An explanation of how the course is structured, its aims and how to get the most out of it.
3. A detailed explanation of how to put together your CLRM programme and what the oral and written presentations entail.
4. The CLRM timetable and a description of the various CLRM seminars.
5. Some general suggestions for further reading on methodology, scholarship and writing doctorates.

If you have any further questions about the course or comments on this guide do get in contact with the convenor of the course, Simon Douglas, simon.douglas@law.ox.ac.uk.

Formal description of the course

Who needs to do the course?

All research students (whether MSt, MPhil or PRS/DPhil) are required to take a research methods course as *one* part of their degree. That requirement can be met by doing one of the following courses:

- *The CLRM (which this guide is about)*: this course is for those who are doing their Research Degree within the Law Faculty but are not associated with either the Centre for Criminology or the Centre for Socio-Legal Studies.
- *Two of the three MSc Criminology methods courses*, 'research design and data collection', 'qualitative research methods', and 'social explanation and data analysis'. These are run by the Centre for Criminology (contact ben.bradford@crim.ox.ac.uk) and are for students who are doing their doctorates through that Centre.
 - See <https://www.law.ox.ac.uk/admissions/postgraduate/master-science-criminology-and-criminal-justice> for more details.
- *The socio-legal research methods course*: This is run by the Centre for Socio-Legal Studies (contact bettina.lange@csls.ox.ac.uk for details) and is for students who are doing their doctorates through that Centre.
 - See <https://www.law.ox.ac.uk/centres-institutes/centre-socio-legal-studies/theory-methods-course> for more details.

Satisfactory completion of the CLRM (or one of the other courses) is one of the conditions for being granted the Degree of MPhil *or* of MSt *or* of being allowed to proceed from the status of Probationer Research Student to that of full DPhil Student or full MLitt Student. With that said, the requirements of these methods courses should not be confused with the more general requirements of the research degree courses – completing the requirements of one of these courses is a *necessary condition but not a sufficient condition* for completing the requirements of the research degree courses.

The rest of this guide is concerned with the CLRM course. For information about the other courses you should contact those listed above.

What are the formal requirements of the CLRM?

Satisfactory completion of the CLRM course requires you to do three things:

- Attend 32 hours of seminars
- Present a 10 minute oral presentation at the Oxford Graduate Legal Research Conference and engage in a feedback session on that presentation
- Submit a 2000 word written presentation based on your oral presentation.

Course Structure and Aims

The structure of the course

The course has two components. The first component is a series of seminars which concern both general and specific issues that arise in legal research method. These are given by a range of Faculty members in Michaelmas Term and Hilary Term. Descriptions of those seminars and a seminar timetable can be found later in this guide. You do not need to attend all these seminars and an important first step in doing the course is deciding which seminars you would like to attend.

The second component of the course is the *compulsory* two-day Oxford Graduate Legal Research Conference held at the beginning of Trinity Term in **April 2017 [date to be confirmed]**. At this conference each student taking the course will be required to do a 10 minute presentation concerning the methodological issues involved in their research. The presentation will then be discussed with another student assigned to be the first respondent to the presentation. The conference is an important forum for discussing your work with your peers and previous students have found it an overwhelmingly positive experience. There will also be a distinguished guest lecturer at the conference as well as specialist sessions on academic career planning etc.

A fortnight after the conference you will be required to hand in a written presentation which is a summary of your presentation and reflections on the discussion at the conference. The timetable for this conference will be circulated in Hilary Term.

The functions of the course

As stated, the CLRM course serves three interrelated functions and it is worth elaborating on these a bit further.

It should be stressed that the course does not take the place of your supervisions. Any issues that are raised by the course or advice given by those participating in the course should be discussed with your supervisor.

Methodology and Legal Scholarship

The first function of the course is to help students develop their methodological skills. Put crudely, methodology is the process by which scholarship is carried out. It encompasses everything from the techniques used to research through to the process of writing and constructing an argument. You cannot carry out scholarship without employing a methodology.

Nearly all graduate research degrees have some form of methodological training and it's also fair to say that the idea of such courses are unappealing to most students. As Thomas Battarbee (CLRM student 2007–08) notes:

Initially when I arrived in Oxford I thought you just 'did' research. I had come across the term 'methodology' in some industrial relations material but I was always a bit suspicious, primarily because I didn't understand what it meant. It always seemed bound up with long explanations about the process of what someone was doing, when I just wanted to hear about the substance of what they were saying. Hence when I came to the first CLRM class and there were repeated references to methodology my eyes glazed over, my prejudices emerged and I was thinking to myself 'let's just get on and do the research'.

This view is not unique, but as Battarbee also notes:

Eight months later, and I'd like to think I've matured a little. I define research methodology simply as 'the systematic processes involved in analyzing material and the strategic choices that are made'. Adopting this broad definition, the notion of 'doing' research without methodology is problematic, akin to thrashing about incoherently in a darkened room. Nonetheless it would be wrong to suggest that this was a smooth or swift shift in thinking. I struggled a great deal with my design and it didn't help when I was still measuring progress in terms of 'getting the research done' and not really seeing much merit in 'methodology'.

The CLRM is thus about ensuring that the process of research is not about 'thrashing about incoherently in a darkened room'. With that said, in legal scholarship, a methodology course cannot take a one-size-fits-all approach for two reasons. First, legal scholarship is methodologically diverse. Second, the methodological challenges involved in different types of research vary dramatically. Thus some students will find themselves refining and building on the techniques and intellectual approaches they acquired in their undergraduate degrees or work they have previously published. Others will be embracing completely new methodological techniques. Most important, however, is that all scholars need to be conscious and reflective of their methodology and methodological choices. This is not just at the start of their degree but in every single piece of legal scholarship they write.

In the CLRM course, methodology is understood as being closely intertwined with ensuring intellectual rigour. Methodology is thus not just about a set of skills but is also about legal scholarship as an intellectual exercise. In particular it is about understanding the intellectual choices that need to be made in any process of research.

Diversity of Legal Scholarship

The second function of the course is that it gives research students the opportunity to discuss with members of the Law Faculty the practical and intellectual issues involved in a diverse range of different forms of legal scholarship. In doing so, these seminars attempt to move beyond thinking of methodology in terms of trite generalities and simplistic formulas. As Meir Dan-Cohen notes:

One feature of legal scholarship that the existing literature establishes beyond dispute is heterogeneity. Legal scholars are doing very different things both in terms of the methodologies they use and the goals they seek to accomplish. Consequently, generalising about legal scholarship is bound to ignore important distinctions and be vacuous.¹

The seminars thus attempt to reflect the great diversity of good legal scholarship that exists. The seminars on particular topics are given by specialists in their field and expose students to a diversity of legal scholarship, legal scholars, intellectual ideas, and practical outlooks. This is an exciting process in itself and works best when students fully interact with those giving seminars. There will often be some suggested reading for seminars which students find a useful focus for discussion.

A forum for debate

Finally, and most importantly, the course is a forum of peers in which research students can discuss the methodological challenges involved in their own research. In the Oxford Law Faculty we see postgraduate research students as early career researchers and as such a community committed to high level scholarship. The CLRM course encourages students to think critically and independently about legal scholarship and the nature of their research.

As such a forum the CLRM course is also a source of peer support. This is particularly important because the course of advanced legal research rarely runs smoothly. Jan Komarek (CLRM student 2006–07) put it this way:

¹ Dan-Cohen M, 'Listeners and Eavesdroppers: Substantive Legal Theory and Its Audience' (1992) 63 *U Colorado L Rev* 569, 569

'Good afternoon. My name is Jan and I haven't written anything related to my thesis for a couple of weeks. I do not know how to do it'. 'Hmmm', a buzz of approval sounds over the class, 'yes!', 'go ahead!' and I am continuing in telling a story of my desperate search for a properly formulated research question and methodology for its answering. Welcome to a 'Researchers Anonymous' session, aka 'Course in Legal Research Method' (CLRM), a series of therapeutic meetings, where researchers help each other, assisted by their professors, to find a way out from their crisis. CLRM's motto could be something like:

'Researchers Anonymous' is a fellowship of men and women who share their experience, strength and hope with each other that they may solve their common problem and help others to recover from a methodological crisis. The only requirement for membership is a desire to write a thesis, which must make a significant and substantial contribution to its field. Our primary purpose is to stay convinced about a possibility (and desirability) to write such a thesis and help other fellow researchers to achieve this.²

Yes, I took me some time to admit that I may have something like a methodological crisis, but once I found that it might be true, I was happy to tell to other similarly afflicted people how I tried to resolve it. I am still not sure that I have succeeded (I am in about one half of my writing now), but I have already written my methodology chapter – right after a therapeutic session led by Professor McCrudden.

Further information on the course requirements

Please note further information about the course will be posted on the CLRM Weblearn site <https://weblearn.ox.ac.uk/portal/hierarchy/socsci/law/clrm>.

The 32 hours of attendance requirement – what counts towards it?

The course requires 32 hours of seminar attendance on seminars related to the methodological challenges in your research. This should be made up of at least 12 hours of CLRM seminars and 8 hours (1 day) of the CLRM conference. If you are thinking of developing a programme that departs from this you must get prior permission from the convenor (Simon Douglas). Permission will be given if there is a sound academic reason to do so. However, it is normally expected that at a very minimum a student will attend at least 8 hours of the CLRM conference.

² Any similarity with a mission statement of Alcoholics Anonymous is purely contingent. Just have a look at www.aa.org/pages/en_US/mission-and-purpose (accessed 1 September 2014). Many thanks to Michal Bobek (now Professor of European Law at the College of Europe, Bruges) for pointing out this, of course accidental, similarity to me.

The following seminars can also count towards the attendance requirement (proof of attendance is required in each case):

- Sessions from the Centre of Socio-Legal Studies methods courses. See <https://www.law.ox.ac.uk/centres-institutes/centre-socio-legal-studies/theory-methods-course> for more details.
- Sessions from any of the three MSc Criminology methods courses. See <https://www.law.ox.ac.uk/admissions/postgraduate/master-science-criminology-and-criminal-justice> for more details.
- Any of the Bodleian Law postgraduate courses (excluding induction). Details of these courses can be found at www.bodleian.ox.ac.uk/law/using-this-library/classes and online sign up is available.
- Any session attended through the Social Sciences Division Doctoral Training Centre (DTC). This Centre draws on the opportunities in different departments and is particularly relevant for those conducting interdisciplinary or ESRC funded research. More general sessions on topics such as public speaking are also offered. Full details can be found at dtc.socsci.ox.ac.uk
- Any other Faculty or University seminars with prior permission from Simon Douglas – simon.douglas@law.ox.ac.uk if they exceed 4 hours. This may include BCL/MJur seminars (not attended before) and the PIL group meeting, among others.

Figuring out what to include in your 32 hours

As is obvious from above there is a considerable amount of flexibility in what to include in the 32 hours of seminar attendance. **The most important thing is to ensure that the seminars you attend are useful for *your* research. It is your responsibility to ensure that the seminars you attend relate to the methodological challenges in your research.** It is strongly recommended that you talk to your supervisor about their thoughts on what type of sessions you might find useful. The Training Needs Analysis framework of the Social Sciences DTC may also be useful.

If you are ever unsure about whether your programme will meet the criteria then you can submit a provisional programme to Simon Douglas to review. Please note that a schedule of attendance must be submitted with your written presentation in Trinity Term. This will be checked off against the registers of attendance.

Your assessed presentation – oral and written

As noted above, each student is required to make an oral presentation at the two-day Oxford Graduate Legal Research Conference. This is a spoken presentation of 10 minutes duration and it should address the issues and problems of design and methodology which have arisen in your first year of research. It

should be based on the written presentation (see below). The following questions may be useful in developing your presentation:

- What is your methodological approach? Has that approach remained constant or evolved over time?
- Are there major pieces of work which are relevant to your methodological approach? How useful have they been?
- How has the process of research proceeded? What has been your greatest success and greatest problem?
- Has your research raised questions about the nature of legal methodology for you?
- How have issues of methodology impacted upon your research question? (Please remember in answering this the focus of the presentation is on research methodology and not your chosen topic.)

You should feel free to present the material as you choose (you can use PowerPoint, handouts etc.) and in some cases you might like to group together with others and present as a panel. Another student will be assigned to be first respondent to your presentation and you should be ready to answer questions from them as well as the rest of the audience.

Written presentations

Written presentations are due at the end of week three of TT along with a schedule of attendance. These should be based on the material which you have used for the spoken presentation, revised and re-considered as necessary in light of the comments and discussion at the Conference. This should be electronically submitted as a word-processed document of about 2000 words in length to Simon Douglas – simon.douglas@law.ox.ac.uk. The document will be read but there is no formal feedback.

Having problems?

If any of the above proves problematic then you should immediately contact the convenor Simon Douglas – simon.douglas@law.ox.ac.uk. In some cases, it is possible to make alternative arrangements. The earlier that the convenor knows about the problems the more quickly and effectively they can be addressed.

Seminar Timetable and Seminar Descriptions

The seminars are all in **The Cube, St Cross Building on Tuesday and will run between 3-5pm** unless otherwise stated. Please note that this timetable may be subject to change due to unforeseen circumstances. **Attendance will be recorded at seminars.**

Week	Topic	Seminar Leaders
MT 1	Different Approaches to Legal Scholarship	Sue Bright & Simon Douglas
MT 2	What constitutes high quality legal research and writing?	Stephen Weatherill
MT 3	Comparing Tort and Crime	Matthew Dyson
MT 4	Pitfalls of legal history: the example of the lease	Mike Macnair & Wolfgang Ernst
MT 5	Interdisciplinarity	Sanja Bogojevic
MT 6	The Digital Impact on Scholarship	Ruth Bird
MT 7	Legal theory and the non-theorist	Les Green
MT 8	Law and Economics	Joshua Getzler
HT 1	Law and Language	Timothy Endicott & Simon Douglas
HT 2	How to do doctrinal scholarship: describe, prescribe or interpret?	Simon Douglas & James Goudkamp
HT 3	Handling comparative issues in legal research	Birke Häcker
HT 4	The Qualifying Test (QT)	Simon Douglas
HT 5	Handling Public International Law Issues in Legal Research	Catherine Redgwell
HT 6	Analogical Reasoning in Legal Scholarship	Grant Lamond
HT 7	Legal taxonomy and private law scholarship	Simon Douglas & William Swadling
HT 8	Theorising particular areas of law	Alan Bogg & Tarun Khaitan

Michaelmas Term 2016

Week one

Different approaches to Legal Scholarship – Sue Bright & Simon Douglas

[Please note: this seminar takes place on Tuesday between 1-3pm in Seminar Room D)

The purpose of this seminar is to examine different ways of approaching legal scholarship such as a doctrinal approach, socio-legal, or theoretical approach etc. We will reflect on why it is important to think about the approach that your research follows, and how to articulate and defend this approach. Three different issues are covered. First, a map of different types of legal methodology is given. Second, we will reflect on the differences and similarities between the different approaches. Third, we will consider the nature and parameters of doctrinal scholarship.

Reading:

- McCrudden C, 'Legal Research and the Social Sciences' (2006) *122 Law Quarterly Review* 632-650
- Hutchinson, Duncan, Defining and Describing what we do: Doctrinal Legal Research, (2012) *17 Deakin L Rev* 83

You should also look through *Researching Property Law* (Palgrave, 2015, ed by S Bright and S Blandy) [or the substantially similar Special Issue of *Property Law Review on Research Methods in Property Law* (2014, Vol 3 Pt 3)] – both are available from the Reserve desk in the Bod Law Library.

Having looked through this volume and read the two articles above, you should come to the seminar ready to discuss:

1. Which of the approaches do you think most closely reflects how you plan to do your own research?
If none, how would you describe your approach?
2. How would you explain what your approach is and why you have chosen that approach?
3. Do you foresee particular challenges with the approach that you plan to take?

Optional Additional Readings

- Cownie F, *Legal Academics: Culture and Identities: Cultures and Identities* (2004) ch 3 (the book is an interesting study of legal academics but chapter 3 specifically investigates their approaches to analysis of legal phenomena)
- Halliday S, *An Introduction to the Study of Law* (2012) (this is intended for students about to study law and is designed to provide a 'map' of different approaches)

- Watkins, Burton, *Research Methods in Law*, (2013) (this is an edited collection in which each contributor addresses the issue of law decision-makers in the legal system from a different methodological perspective)

Week two

What constitutes high quality legal research and writing - Stephen Weatherill

The intention behind this seminar is that we should have a discussion about the nature and purpose of law journals in the development of legal scholarship (and also about how to go about publishing in them for the purposes of building an academic career).

Could you please try to read in advance [Fred Rodell's 'Goodbye to Law Reviews' \(1936-37\) 23 *Virginia Law Review* 38](#) - it's short, only 9 pages, and you can easily get to it via HeinOnline: through the 'Find e-journal' page on OxLIP.

Among several irresistible soundbites, try 'The law is a fat man walking down the street in a high hat. And far be it for the law reviews to be any party to the chucking of a snowball or the judicious placing of a banana peel'. So - should law reviews (or law journals) chuck snowballs and place banana peel? Do they, in your experience?

As for Rodell's: 'There are two things wrong with almost all legal writing. One is its style. The other is its content. That, I think, about covers the ground'. Well, it does indeed cover the ground. Is it fair, though?

If you fancy a more recent iconoclast, read a bit of Pierre Schlag – e.g. 'Hiding the Ball' *New York University Law Review* 71 (1996) p.1681 – or still more entertainingly, his jointly-authored blog, e.g. brazenandtenured.com/2012/02/28/the-law-review-rejection.

We have access in the seminar to a range of different legal methodologies and a range of different subject matter – that's *you*, in your infinite variety as a group of research students with a single target (your degree) but a lot of different routes to get to that target. So I hope we can compare notes on the worth (of absence thereof) of law journals in your subject area – in themselves and as a form of dissemination that is different from, say, books or other media.

What is the purposes (or purposes) of law journals?

Are there journals that you feel you *have* to read? What is the best or, at least, most influential piece of legal scholarship you have come across recently (in your field or any other)? Why did it appeal to you? And do bring to our attention anything you have recently read that did not impress you. Do try and think about this in advance!

I have 4 years' experience as one of the articles editors of the *Modern Law Review* so I can also tell you something about the profile of the submitted papers that do *not* get published - and that is a large majority.

We will also reflect on the distinct roles played in the development of legal scholarship by general law journals and specialist law journals. There are plenty of other questions too. Is academic legal writing a source of law? Why do American law journals look so different from European law journals (and does it matter)? We might also talk about career strategy - why try to get papers published in journals at all?

Should we worry about 'herd behaviour' : '... B follows A, although B has information that A might be wrong. C, D, and E then follow B, as they mistakenly believe that A and B's decision is based on better or more convincing information than they possess themselves researchers choose to follow hot topics and trends, often initiated by policymakers ... instead of developing their own agenda' (Van Gestel and Micklitz, 'Why Methods Matter in European Legal Scholarship' (2014) 20 *European Law Journal* 292, 305).

Do journals encourage herd behaviour?

Week three

Comparing Tort and Crime – Matthew Dyson

Comparisons from within a legal system are as yet largely untapped sources of inspiration and understanding in English law, and in the domestic laws of many other legal systems. The field is also undertheorised, with the few who do attempt it typically ignoring any possible underlying differences or making somewhat gross oversimplifications about them. This seminar will take two fields within English law, criminal law and tort law, and use them as points from which to explore how to analyse across areas of law within a legal system. It is broken down into thinking about where, how, why and when interactions across fields of law occur.

Reading

- Matthew Dyson, *Comparing Tort and Crime* (CUP, 2015) ch 10
- JC Smith, 'Civil Concepts in the Criminal Law' [1972] *CLJ* 197
- Rob Stevens, 'Private Rights and Public Wrongs' in M Dyson (ed), *Unravelling Tort and Crime* (CUP 2014)

Week four

Pitfalls of legal history: the example of the lease – Mike Macnair and Wolfgang Ernst

Like Molière's M. Jourdain, who talked prose without knowing it, legal research students occasionally find themselves doing legal history without knowing it: the terrible temptation of the "introductory historical chapter" which can grow accidentally into half of, or even the whole, thesis. Since doing legal history is rather more technical than talking prose, some awareness of the methodological issues is desirable, whether to avoid them or to embrace them.

We will be using the example of the lease of land. The lease in modern English law is an estate in land, i.e. a time-fraction of ownership: Law of Property Act 1925 s 1 (1) (b). In modern French and German law the lease is prima facie a contractual obligation, subject to specific cases like building leases, and to regulatory legislation. Treating the lease as a time-fraction of ownership poses modern legal conceptual and boundary questions, like the boundary between lease and licence (*Street v Mountford*, *Bruton v London & Quadrant Housing Trust*).

These conceptual problems, however, are not new. And if we start to work backwards from their modern treatment to older cases and treatise literature, we find ourselves very rapidly in 'the past is a foreign country: they do things differently there': different procedures, authorities, forms of legal literature and even languages. This turns out to be as true for civil lawyers looking at pre-code law as for common lawyers looking at pre-1875 law. The questions posed, moreover, involve economic and social explanations of legal development as well as pure-doctrinal ones; and the economic and social historians may give very different explanations to those of 'pure doctrinal' historians.

Week five

Interdisciplinarity – Sanja Bogojevic

Interdisciplinarity is a reality and an aspiration of much legal scholarship. As so much scholarship is about thinking about the interrelationship between law and real world problems legal scholars are engaging with many other disciplines in a range of complex ways. Despite this being the case there is little analysis within legal scholarship about what it means to be interdisciplinary. This is particularly problematic when interdisciplinary research can result in poor scholarship due to veering into 'dilettantism' (Feldman) or simple polemic. In this seminar we first begin at looking at the different ways to conceptualise disciplines (ways of thinking, vocabularies, sociological constructs etc) and interdisciplinarity. Second, five different types of interdisciplinary legal scholarship are identified. Finally, a series of dos and don'ts for this type of scholarship are outlined.

Reading:

- Thompson Klein J, *Interdisciplinarity: History, Theory and Practice* (Wayne State University Press, Detroit, 1990) at ch 8
- Frodeman R et al (eds) *The Oxford Handbook of Interdisciplinarity* (OUP, 2010) at Chapter Two
- Collins H and Evans R, *Rethinking Expertise* (University of Chicago Press, 2007) - Ch 1

Week six

The Digital Impact on Scholarship – Ruth Bird

Over the last decade there has been a dramatic rise in the provision of digital research resources and the use of internet for research. The consequences are far reaching. Not only do scholars need to now deal with a deluge of information but the nature of that information has also diversified and new infrastructures and industries for its production and delivery have been created. Scholars have access to law reports, RSS feeds, journals, blogs, podcasts, wikis, working papers, government documents, NGO publications and statistics without ever physically going to a law library. Likewise, email, posting papers on online, bibliographic databases, and computing power have transformed how scholars write. Initial responses to these developments tend to veer between a ‘Gee whiz isn’t that amazing’ and Cassandra-like pronouncements that scholarship is doomed. In this seminar we soberly reflect on the implications of these developments for legal methodology and research. In particular, we consider how these changes shape legal scholarship as an intellectual enterprise.

Reading:

- MacDonald R, ‘Better Scholarship, Better Pedagogy, Greater Openness: Who’s Afraid of the Cyber Law Journal’ (2011) 36 *Queen’s LJ* 345
- Leiter B, ‘Why Blogs are Bad for Legal Scholarship’ (2006) 116 *Yale Law Journal Pocket Part* 53
- Plotin S, ‘Legal Scholarship, Electronic Publishing and Open Access Transformation or Steadfast Stagnation?’ (2009) 101 *Law Library Journal* 31
- Centre for Information Behaviour and the Evaluation of Research, *Information Behaviour of the Researcher of the Future* (UCL Jan 2008)
- Bird R, ‘Legal Information Literacy’ in Richard Danner & Jules Winteron (eds), *IALL International Handbook of Legal Information Management* (Ashgate 2011)
- Research Information Network, Project on ‘Research supervisors and Information Literacy’ www.rin.ac.uk/our-work/researcher-development-and-skills/information-handling-training-researchers/research-superv.

- Something slightly off topic, but perhaps of interest is a roundtable conducted by Lexis in Australia that looks at the pace of change and its impact on firms - www.lexisnexis.com.au/paceofchange.

Week seven

Legal theory and the non-theorist - Les Green

Legal theorists study legal theory (i.e. jurisprudence, or the philosophy of law) because they find it intrinsically interesting and because they aspire to make some progress on theoretical problems about law. But what about everyone else? If one is doing doctrinal, or historical, or empirical research in law does one need to 'know some theory'? Should every DPhil have a 'theoretical chapter'? What, if anything, could that contribute to one's research, and how might one approach it?

Reading:

- Max Weber, *Science as a Vocation* (various editions, and widely available online)
- HLA Hart, *The Concept of Law, Third Edition: 'Introduction' by Leslie Green, and Chapter 1*
- Dworkin R M, 'Hart's Postscript and the Character of Political Philosophy', 24 *OJLS* 1 (2004), esp. section 4.

Week eight

Law and Economics – Joshua Getzler

Law and Economics has changed greatly since its genesis in the 19th century and its explosive years of the late 1960s and 70s. 'L&E' originated in the utilitarian analyses of law offered by Bentham in the early 19th century, measuring law against the yardstick of utility, which for Bentham was a cardinal measure of welfare. Early 20th century L&E was much concerned with anti-trust and the correction of market failure. The Chicago School of Coase and Posner in the 1960s made a break in this tradition. These scholars moved L&E towards analysis of marginal utility based on ordinal preference, and in a sense returned economic analysis to ideas nascent in Adam Smith's *Wealth of Nations*. Coase produced two great theorems based on transaction cost analysis, explaining corporate organisation and property rights. A new legal discourse was generated by his insights, but the revolution did not stop there. Posner, drawing on Becker's economic sociology, began a still wider research programme, arguing that *all* law was prone to economic analysis - not only law that developed and protected economic assets, such as corporate, commercial, contract, tort and property law, but also family law, crime, environment, labour law. Public choice theorists such as Buchanan added analysis of the state and of public action to the roster of L&E. There was a hostile reaction

elsewhere in the academy as the L&E movement grew to a commanding position in the prestigious American law schools. Anti-utilitarian theorists such as Dworkin levelled strong attacks on Posner and his followers, and then, perhaps surprisingly, Coase rejected attempts to turn economic analysis into a general vision of law and state. At the same time the L&E movement failed to win great traction in the Anglo-Commonwealth and European legal worlds.

Today L&E has embraced new streams of economic analysis, including behavioral heuristics, game theory, and econometrics. It continues to attract some of the best and brightest legal scholars, and while its methods and normative grounds remain controversial, it brings new questions and perspectives to the law and cannot be ignored; indeed L&E is finally burgeoning in the UK, EU and Commonwealth and is no longer an American movement alone. This seminar examines the roots of L&E and looks at ways in which economic analysis can add to understanding across a broad terrain of the law. We will look at the technical repertory of L&E, its normative assumptions, and the policy ideas embedded in the discourse. Readings will draw from the work of Smith, Bentham, Coase, Posner and some modern practitioners.

Hilary Term

Week one

Law and Language – Timothy Endicott and Simon Douglas

Every field of law has controverted terms. What do words such as ‘corporation’, or ‘the state’, denote? Do words such as ‘contract’, or ‘enrichment’, describe facts, observable by lawyers and non-lawyers alike? And do some words, like ‘right’, ‘duty’ and ‘power’, refer to any real-world counter-parts? By thinking about language, and how judges and legal scholars use words, it is possible to offer new insights into a research topic.

Take, for instance, a notoriously difficult word such as ‘possession’? Does this describe a factual state of affairs? Or does it denote some legal concept that only exists within the realm of law? Or is it something in between: a fiction or ‘legally regulated’ fact? Asking such questions may offer a new perspective on legal arguments that make use of the word ‘possession’.

Many doctoral theses begin with an attempt to define terms. One way of enhancing our understanding of these terms is by considering the way in which, and the purposes for which, lawyers are using the relevant words..

Reading:

- J Finnis, *Natural Law and Natural Rights*, ch 1
- B Simpson, ‘The Analysis of Legal Concepts’ (1964) 80 LQR 535

- S Douglas, 'Is Possession Factual or Legal?', in E Descheemaeker (ed), *The Consequences of Possession* (Edinburgh University Press 2014) (available on weblearn).

Week two

How to do doctrinal scholarship: describe, prescribe or interpret? – Simon Douglas & James Goudkamp

For some legal scholarship is no more than an exposition of the law as we find it: a descriptive account of the rules and principles of a legal system. For others the legal scholar should do more than just describe the law as he finds it: he should suggest what the law should be. However, most accounts of the law offered by scholars are neither purely descriptive, nor wholly prescriptive. There appears to be a middle ground, sometimes called 'interpretative legal theory', which may be the dominant approach in doctrinal legal scholarship. This approach aims to offer the best explanation for a legal system as it is found, but (unlike descriptive accounts of the law) is not undone when it encounters rules or doctrines which may appear inconsistent with the theory.

The aim of this seminar is to examine interpretive legal theory. We will consider the purpose of such an approach: should it attempt to reveal some intelligible order in the law, or provide a unified explanation for every aspect of the legal system? How does one test the validity of such a theory: by the best 'fit' with the legal system? its coherence? or its moral justification? How does one approach contradictory cases or statutes: is it valid to say that a case was wrongly decided? or does a contradictory case simply mean that the theory is wrong?

The focus of the seminar will be on private law (the law of torts, in particular). However, the questions raised will be relevant to all areas of doctrinal legal scholarship.

Reading:

- Goudkamp & Murphy, 'Tort Statutes and Tort Theories' (2015) 131 LQR 133
- Beever & Rickett, 'Interpretive Legal Theory and the Academic Lawyer' (2005) 68 MLR 320
- S Smith, 'Taking Law Seriously' (2000) 50 Univ of Toronto LJ 241-59

Week three

Handling comparative issues in legal research – Birke Häcker

This session is primarily aimed at students whose topic is not necessarily comparative in nature, but who nevertheless encounter comparative issues during their research. This raises a number of problems which are difficult to tackle without any training in comparative law. The purpose of the session is not only to make students aware of the potential benefits of adopting a comparative perspective and to give some guidance as to how to go about comparative work. It will also raise awareness of the pitfalls of doing research on foreign law. Students who wish to learn more about comparative methodology are invited to attend the lecture series 'Introduction to Comparative Law' by Professor John Cartwright in weeks 1 and 3 of MT.

Reading:

- K Zweigert and H Kötz, *An Introduction to Comparative Law* (Oxford, OUP, 3rd edn, 1998) chd 1, *2, *3, and 5.
- M Reimann and R Zimmermann (eds), *The Oxford Handbook of Comparative Law* (Oxford, OUP, 2006) chs *10, 11-13, and 21.
- E Örüçü and D Nelken (eds), *Comparative Law: A Handbook* (Oxford, Hart Publishing, 2007) ch 1.
- **Bodum USA, Inc v La Cafetière Inc*, No. 09-1892, US Court of Appeals, 7th Circuit (2 September 2010)

Week 4

The Qualifying Test (QT) – Simon Douglas

By the end of the fourth week of your third term as a PRS, you need to apply to transfer to full DPhil status (or MLitt status, if that is the qualification you are ultimately seeking). This transfer requires successful completion of the Qualifying Test, in which your project and your achievements so far are assessed by two members of the Law Faculty who will read your written submission and then arrange an interview with you. The Law Faculty Graduate Handbook has this to say about the QT transfer process:

'The Transfer of Status assessment is to ensure that the student is making satisfactory progress in the development of the research, to ensure that the work is of potential D.Phil. quality, and that the methodology of the research is appropriate and practicable. The transfer process provides the opportunity for the student to discuss their work with two independent members of staff and to

receive feedback. Broadly the assessment should show a plan for the thesis, which locates the research in the context of earlier work in the field, sets out the questions, hypotheses or issues on which it will focus, and describes and explains the methods by which these will be answered, tested or addressed. The assessment procedures are intended to remove the risk of failure and to reduce the risk of referral as far as possible, and must therefore be as rigorous as necessary to achieve this.'

This CLRM session provides advice about what the QT Part A Thesis Plan should aim to achieve; guidance about what the Faculty assessors expect it to contain; and tips on how to approach the QT interview. It is also an opportunity to ask questions about the QT process.

Week five

Handling Public International Law Issues in Legal Research – Catherine Redgwell

Many of you will be embarked upon research topics which appear to bear no relation to public international law sources and methodology. And then that pesky issue of treaty interpretation and application arises, or the relationship between domestic law and international law. The purpose of this seminar is to equip you with the tools to recognise when a PIL issue arises, the benefits of including an international dimension to your research, and some of the pitfalls to be avoided. The seminar will include a class exercise on treaty interpretation.

Reading:

- Vaughan Lowe, *International Law* (Oxford, OUP, 2007), ch 1 ('The Ambit of International Law')
- James Crawford, *Brownlie's Principles of Public International Law* (Oxford, Oxford University Press, 8th edn, 2012), ch 3 ('The Relations of International and National Law')
- Hugh Thirlway, 'The Sources of International Law', ch 4, and Malgosia Fitzmaurice, 'The Practical Workings of the Law of Treaties', ch 7, in Malcom D Evans (ed), *International Law* (Oxford, Oxford University Press, 4th edn, 2014)

Further reference

- For practical guidance, you should be aware of the Bodleian Law Library's guide to PIL research available at: <http://libguides.bodleian.ox.ac.uk/c.php?g=422862&p=2887546>

Week six

Analogical Reasoning in Legal Scholarship – Grant Lamond

Analogical reasoning is a pervasive feature of legal writing. In this seminar we will consider what an analogy is, and why it is such a common feature in legal argument. The different kinds of analogies used by lawyers, and their relative strength, will be examined.

Reading:

- Grant Lamond, 'Analogical Reasoning in the Common Law' (2014) 34 OJLS 567.

Week seven

Legal taxonomy and private law scholarship – Simon Douglas & William Swadling

A renewed interest in legal taxonomy, due in large part to the work of Peter Birks, has had an important impact on private law scholarship. It marks a break with the old approach to classification, typified by Viner's Abridgment and Halsbury's Laws of England, which simply classified the law alphabetically. The advantage of the Birksian taxonomical scheme is that it gives one a clear view of which factual events in the real world have legal consequences. In the first part of this seminar we will consider the problems we run into when we do not have such a scheme. This will be illustrated through the law of trusts.

There are, however, problems with legal taxonomy. Whereas biological classifications cannot change reality (erroneously categorising a whale as a fish does not mean that whales cease to have mammalian characteristics), legal taxonomies can change the law. If a cause of action in unjust enrichment, for example, is erroneously categorised as a tort, then this may lead to a change in the characteristics of the action. In the second part of the seminar we will consider two areas of law, tort law and property law, which have proved difficult to categorise. We will see how different views on where tort and property should fit within our legal taxonomy can actually lead to substantive changes in the law.

Reading:

- Low K, 'The Use and Abuse of Taxonomy' (2009) 29 *Legal Studies* 355.
- Birks P, 'Equity in the Modern Law: An Exercise in Taxonomy' (1996) 26 *UWALR* 1-25.
- Stevens R, *Torts and Rights* (OUP, Oxford 2007) 284-305.
- Grantham R and Rickett C, 'Property Rights as a Legally Significant Event' [2003] *CLJ* 717.

Week eight

Theorising particular areas of law – Alan Bogg & Tarun Khaitan

The position of 'theory' in legal research is controversial. The word has a tendency to make lips curl and the air go blue, albeit for different reasons. For some so-called 'black letter lawyers' devoted to discerning or imposing a coherent order on a pattern of cases, 'theory' might be regarded as either a hopelessly self-indulgent exercise or something dispensable, a distraction to the matter at hand. For those who self-identify as 'general jurists', the idea that the philosophically uninitiated might try their hand at a bit of 'theory' in one of the law's doctrinal compartments sometimes stimulates derision or, amongst nicer jurists, good-natured sympathy and admiration at a heroic endeavour that is sure to fail.

This seminar will examine the role of 'theory' in advanced legal research. Is it possible for legal research to be innocent of 'theory'? Perhaps that depends upon what 'theory' means. And perhaps it depends upon the nature of the research questions being posed. For those hardy souls who want to give 'theory' a whirl, many questions arise about how we theorise about particular areas of law, such as tort law, discrimination law, constitutional law, contract law or labour law. Does a good theory seek to *explain* an area of law, or does it *prescribe* what it should be? Or does it do something else entirely? If normative theorising prescribes what the law should be, what distinguishes it from wishful thinking? Do our theoretical commitments on issues of *general* jurisprudence have implications for the enterprise of developing a theory of particular areas of law? Must "particular jurisprudence" restrict itself to particular jurisdictions? Indeed, what makes a particular area of law an 'area of law'? This overview, probably like the seminar itself, is in the business of posing and exploring questions in a spirit of open enquiry. It will bring together three Oxford academics each of whom has been accused of 'theory' in their own work, to discuss the challenges and opportunities of theoretical engagement in discrete doctrinal areas.

Reading:

- Alan Bogg, 'Labour Law and the Trade Unions: Autonomy and Betrayal', in Bogg, Costello, Davies & Prassl (eds) *The Autonomy of Labour Law* (Hart Publishing 2015).
- Aileen Kavanagh, 'In Defence of General Constitutional Theory', in *Fidelity and Change in Constitutional Adjudication*, University of Oxford DPhil Thesis (2000), pp. 10-19.
- Tarun Khaitan, 'Prelude to a Theory of Discrimination Law', in Hellman & Moreau (eds) *Philosophical Foundations of Discrimination Law* (OUP 2013).
- David Strauss, 'What is Constitutional Theory?' (1999) 87 California Law Review 581, available at http://chicagounbound.uchicago.edu/journal_articles/1992/
- James Goudkamp & John Murphy, 'Tort Law and Tort Theory' (2015) LQR 133.

Further reading

Below are some suggestions for further reading on a range of topics.

The research degree requirements and other documents

These are included in your postgraduate handbook but you can never have too many copies of them!

On the requirements for degrees, all via www.admin.ox.ac.uk/examregs

The requirements for the degree of DPhil listed in 7.6

The requirements for the degree of MSt listed under Legal Research

The requirements for the MPhil

On supervision

<http://www.admin.ox.ac.uk/edc/policiesandguidance/policyonresearchdegrees/section4supervision/>

On plagiarism

www.ox.ac.uk/students/academic/guidance/skills/plagiarism - EPSC's website

Legal methodology

The following are some useful readings on the topic of legal scholarship.

Handbooks and other publications

Cane P & Tushnet M (eds.) *Oxford Handbook of Legal Studies* (OUP, 2003) - a great starting point

Cane P & Kritzer H (eds.) *The Oxford Handbook of Empirical Legal Research* (OUP, 2010) - ditto for those doing empirical work

Halliday S & Schmidt P (eds.) *Conducting Law and Society Research: Reflections on Methods and Practices* (CUP, 2009) - the key word here is 'reflections' - discussions with academics about how they produced their work

Cryer R et al, *Research Methodologies in EU and International Law* (Hart, 2011)

van Hoecke M, *Methodologies of Legal Research: What kind of Method for What Kind of Discipline?* (Hart 2010) - some really thoughtful essays in this collection

Articles and special issues

'Legal Scholarship' 63 *University of Colorado Law Review* 521-750 (1992) - includes Delgado, Rubin, Dan-Cohen, and Priest

Feldman D, 'The Nature of Legal Scholarship' 52 *Modern Law Review* 498 (1989)

'Legal Scholarship –Its Nature and Purpose' 90 *Yale Law Journal* 955-1298 (1981) - includes Posner, Tushnet, Gordon, Michelman, Clark, & Kronman

'After Arthurs: Symposium on Canadian Legal Scholarship' 23 *Osgoode Hall Law Journal* 395-541 (1985)

Rubin E, 'On Beyond Truth: A Theory for Evaluating Legal Scholarship' 80 *California Law Review* 889 (1992)

Bartie S 'The lingering core of legal scholarship' 30 *Legal Studies* 345 (2010)

More general on academia

Cownie F, *Legal Academics: Cultures and Identities* (Hart 2004)

Becher T & Trowler P, *Academic Tribes and Territories* (2nd ed) (OUP 2001)

Lamont M, *How Professors Think* (Harvard UP 2009) - an interesting study of interdisciplinary peer review.

Guidance on how to write a thesis

There are a number of books on the market giving guidance on how to write a doctorate. Like all books giving guidance whether you find them useful or not is a very personal thing. Below are a couple that different people have found useful.

Wildavsky A, *Craftways: On the Organisation of Scholarly Work* (2nd ed) (Transaction 1993)

Morris C & Murphy C, *Getting a PhD in Law* (Hart 2011) - title says it all!

Becker H, *Writing for Social Scientists: How to Start and Finish Your Thesis, Book or Article* (2nd ed) (University of Chicago Press 2007)

Murray R, *How to Write a Thesis* (2nd ed) (Open University Press 2006)

Dunleavy P, *Authoring a PhD* (Palgrave 2003)

Fowler A, *How to Write* (OUP 2006)

It should be remembered that these books, like all forms of advice, should not be read too literally. The important role that these books play is getting you to think critically and carefully about what you are doing - a doctorate or a dissertation will not write itself!