



COURSE IN LEGAL RESEARCH METHOLD

FACULTY OF LAW

UNIVERISTY OF OXFORD

2017-18

WELCOME TO OXFORD

Dear Research Students 2017-18,

Many congratulations on getting a place to pursue your research here at the Faculty of Law in the University of Oxford. We are delighted to welcome you to the Faculty and look forward to helping you pursue your research questions in your chosen field of study.

Your supervisor will provide you with guidance, support and feedback as you engage in your research. Alongside that supervision, the *Course of Legal Research Method* aims to expose you to the wide variety of research undertaken by members of the Faculty, as well as the diversity of methodological approaches to that research. We hope that this exposure – combined with your committed engagement with the course – will enrich your experience here at Oxford and give you a vibrant and stimulating forum in which to reflect on the kinds of question you want to answer and, in particular, *how* you propose to answer them. We also hope that this course will enable you to forge friendships amongst your fellow research students in the Faculty, which will provide you with stimulation and support as you begin your research.

If you have any questions or queries or reflections about this course, please get in touch with me at any time on aileen.kavanagh@law.ox.ac.uk.

Good luck!

Professor Aileen Kavanagh

Professor of Constitutional Law, University of Oxford

Director of the *Course in Legal Research Method*

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 2017-18. 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 Aileen Kavanagh, aileen.kavanagh@law.ox.ac.uk or Geraldine Malloy in the Law Faculty Office, geraldine.malloy@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 rachel.condry@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 two-day *Oxford Graduate Legal Research Conference* held at the beginning of Trinity Term on 19 & 20 April 2018. Your participation in this conference is *compulsory* and is a mandatory requirement for completion of the course, so please put these dates in your diary to ensure that you will attend. 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 getting feedback from those inside and outside your field of study. Previous students have found it an overwhelmingly positive experience. Each year, we invite a distinguished scholar to give the Keynote Lecture at the conference.

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. The choices you make about how you carry out your research may be subconscious or conscious. One of the aims of the CLRM is to gain greater awareness of the choices you make whilst doing your research, to assess their pros and cons and subject them to critical scrutiny.

During the progress of the CLRM, you will be exposed to many different methodological approaches employed by members of the Faculty of Law at Oxford. We appreciate that 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.

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/site/:socsci:law:research: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 Director (Aileen Kavanagh). 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.

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

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

- 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 Aileen Kavanagh – aileen.kavanagh@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 Aileen Kavanagh 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). In thinking about your presentation, it may be

helpful to consult past programmes for the CLRM conference which are available on Weblearn. More specifically, 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 Aileen Kavanagh – aileen.kavanagh@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 Aileen Kavanagh aileen.kavanagh@law.ox.ac.uk. In some cases, it is possible to make alternative arrangements. The earlier we know 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	Becoming a Researcher	Lucia Zedner
MT 2	Different Approaches to Legal Scholarship	Sue Bright & Sandy Steel
MT 3	What constitutes high quality research and writing?	Stephen Weatherill
MT 4	Handling comparative issues in legal research	Birke Häcker
MT 5	Interdisciplinarity	Liz Fisher
MT 6		
MT 7	*Legal theory and the non-theorist	Les Green
MT 8	Legal taxonomy between private and public law	Robert Stevens
HT 1	Having Your Work Evaluated/Evaluating Others' Work	Liz Fisher
HT 2	Handling Public International Law Issues in Legal Research	Catherine Redgwell
HT 3	How to do doctrinal scholarship: describe, prescribe or interpret?	James Goudkamp
HT 4	The Qualifying Test (QT): Facts and Fiction	Aileen Kavanagh & Stephen Weatherill
HT 5	Analogical Reasoning in Legal Scholarship	Grant Lamond
HT 6	Tackling Empirical Legal Research	Ian Loader
HT 7	Thinking Inside and Outside the Box in Legal Scholarship	Liz Fisher
HT 8	Theorising Particular Areas of Law	John Gardner & Aileen Kavanagh

*The legal theory seminar in week 7 will take place between 4-6pm.

Michaelmas Term 2017

Week 1

Becoming a Researcher – Lucia Zedner

This session will tackle the daunting hurdle of starting your research project. Its aim is to enable you to make a sure, speedy and successful start to your research. It will offer help and guidance in relation to the most rudimentary (but difficult) aspects of starting a research project, by addressing questions such as - How to formulate your research questions? Where to start? How to deal with controversies in the literature? How to get the most out of your supervisor? In addition, please feel free to come with questions or email them in advance to Lucia Zedner lucia.zedner@law.ox.ac.uk

Recommended Reading:

R Murray *How to Write a Thesis* (Open University Press McGraw Hill Education)

<http://www.mheducation.co.uk/9780335262069-emea-how-to-write-a-thesis>

The Oxford Learning Institute has 3 interesting pages of advice and suggested reading on *Life as a doctoral student* at

<http://supervision.learning.ox.ac.uk/students>

Many other universities also post tips, see eg

<https://www.grad.ubc.ca/current-students/graduate-pathways-success/getting-started-your-thesis-or-dissertation>

<https://writingcenter.fas.harvard.edu/pages/developing-thesis>

Possibly useful, if very brief, are newspaper 'how to' articles, eg

<https://www.theguardian.com/education/2013/mar/21/how-to-plan-your-dissertation>

<https://www.theguardian.com/education/2013/mar/25/how-to-write-your-dissertation>

Week 2

Different approaches to Legal Scholarship – Sue Bright & Sandy Steel

The purpose of this seminar is to examine different ways of approaching legal scholarship such as a doctrinal approach, theoretical approach, comparative 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.

The seminar will be an open discussion encouraging us all to reflect on a number of issues:

- Different approaches to legal scholarship;
- What is 'methodological rigour'?
- How should we explain our 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 AND/OR
- Baude, Chilton, Malani, 'Making Doctrinal Work more Rigorous: Lessons from Systematic Reviews' 84 *University of Chicago Law Review* 37

I suggest that you 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.

It would be helpful if you could think about these questions before the seminar:

1. Do we really have to be able to explain our methodological approaches? Why bother?
2. 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?
3. How would you explain what your approach is and why you have chosen that approach?
4. 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)
- 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 3

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, including those that have become rapidly more high-profile lately such as blogs and Twitter.

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' fairly recent 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 4

Handling Comparative Issues in Legal Research – Birke Haecker

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 5

Interdisciplinarity – Liz Fisher

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 it 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:

- Collins H and Evans R, *Rethinking Expertise* (University of Chicago Press, 2007) - Ch 1

Week 6 – No seminar

Week 7

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)
- Hart H L A, *The Concept of Law*, 2nd ed. (OUP 1994), Chap 1
- Dworkin R M, 'Hart's Postscript and the Character of Political Philosophy', 24 *OJLS* 1 (2004), esp. section 4.

Week 8

Legal Taxonomy Between Private and Public Law – Robert Stevens

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 view of which factual events in the real world have legal consequences.

First we need to demarcate private law from public law. There are different ways of making this division, but one is to distinguish between public duties and private duties, the latter being the realm of private rights.

Second, within private law we need to distinguish between classification based upon the *form* of rights and classification by reference to the *reason* why rights of a particular class arise. The distinction between rights in rem and rights in personam is of the former kind, and we will consider how, if at all, the law of trusts can fit within such a scheme.

Third, if we classify according to the (moral) reason why rights of a particular kind arise (eg agreements ought to be kept), is it, as Birks supposed, possible to classify law in the same way as animals? If we classify according to the different *reasons* why rights arise, how do we determine what those reasons are? Can this be settled by the positive law? What if there is more than one reason in play? Does the form of rights we are seeking to justify restrict the range of reasons that are possibly relevant?

Reading:

*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.

Low K, 'The Use and Abuse of Taxonomy' (2009) 29 *Legal Studies* 355

Grantham R and Rickett C, 'Property Rights as a Legally Significant Event' [2003] *CLJ* 717.

Hilary Term 2018

Week 1

[Having Your Work Evaluated/Evaluating Others' Work – Simon Gardner & Liz Fisher](#)

Inherent in academic life is evaluation. Part of developing the expertise of a scholar is learning how to evaluate the work of others as well as learning how to deal with the process of evaluation. In this seminar we explore the role of criticism in legal scholarship and focus in particular on learning how to foster a constructive relationship with evaluative processes. Criticism and comment can come in many forms. At one end of the spectrum are comments in passing from peers and informal feedback from supervisors. Further along the spectrum, there is the discussion and evaluation of others' work embedded in scholarly analysis. At the other end of the spectrum, are formal forms of evaluation that have consequences – examiners' reports and referees' reports. In this seminar we explore how to learn from these processes, how to develop a healthy relationship with mistake-making and thus how to see evaluation as constructive and inspirational.

Reading

- R. Sennett, *The Craftsman* (Allen lane 2008) - Ch 9

Week 2

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.

- 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 3

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 4

The Qualifying Test (QT): Facts and Fiction - Aileen Kavanagh & Steve Weatherill

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 from two academics in the Faculty about what is expected in the QT – and where the common pitfalls lie. They will separate the facts from the fiction about the QT. Drawing on experience from doing many QTs over the years, this seminar will give an outline of what this test involves, and will give tips on how to approach the QT interview. This is a valuable opportunity to ask questions about the QT process.

Week 5

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 6

Tackling Empirical Legal Research – Ian Loader

Tackling empirical legal research

What is the role of empirical enquiry in understanding legal phenomena? How can social research methods – surveys, interviewing, observation and so on – contribute to legal scholarship, either on their own or in combination with more doctrinal forms of enquiry. In this seminar we consider these questions. The seminar will address the theoretical, ethical and practical questions relating to the use of empirical methods in law. It will also offer an introduction to the principal techniques of data collection and analysis and why and how they can be deployed.

Reading

P. Cane and H. Kritzer (eds) (2010) *The Oxford Handbook of Legal Research Methods*. Oxford University Press. (Introduction, chs. 37 and 38 and the chapter most relevant to your substantive research area)

Week 7

Thinking outside the box in legal scholarship - Liz Fisher

By necessity, scholars must frame what they analyse and in different areas of legal scholarship this has led to assumptions about what does it mean to think 'inside' and 'outside' the box. In this session we explore the concept of thinking outside the box in legal scholarship and inquiry. By its very nature this requires us to reflect upon the type of 'intellectual boxes' that one finds in legal scholarship and how they relate to understandings of great legal scholarship.

Reading:

- Gardner S, 'Trashing with Trollope: A Deconstruction of the Postal Rules in Contract' (1992) 12 OJLS 170.

- Stone C, 'Should Trees Have Standing?: Towards Legal Rights for Natural Objects' (1972) Southern California LR 450-501.

Week 8

Theorising Particular Areas of the Law: John Gardner and Aileen Kavanagh

This seminar is focused on the challenges faced by scholars who do theoretical work in discrete areas of law. Such scholars may strive to develop a theory of tort law or a theory of criminal law. Or they may wish to offer a theoretical understanding or theoretical defence of particular doctrines within those discrete areas. Some may explore questions in constitutional theory without wishing to develop a 'theory of constitutional law'. Still others wish to uncover the values which underpin a particular area of law.

But what distinguishes *theoretical* claims about these areas of law, from other claims? What criteria do we use to establish a good theory of constitutional law, for example? Does a good theory seek to *explain* an area of law? Or does it *prescribe* what it should be? Or does it justify the law as it is? Perhaps theory of particular areas of law encompass all of the above – or is it 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? In this seminar, we will explore such questions.

Reading: TBC

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.

Umberto Eco, *How to Write a Thesis* (New Edition, 2015).

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)