

***Welcome to the EIPIN  
Innovation Society Methods 1:  
Legal Research Methodology***

Maastricht, 23<sup>rd</sup>/24<sup>th</sup> of January 2018

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# A quick introductory round

- Name
- Topic
- Previous experiences with (legal) methodologies?

# A quick overview of the sessions

- Today:
  - 09.00-10.00: General introduction to the Training
  - 10.00-11.00: From research topic to research problem
  - *Coffee break*
  - 11.15-12.00: Embedding of research and the role of literature
  - *Lunch*
  - 13.00-14.00: From research problem to research question
  - 14.00-15.00: Theoretical relevance
  - 19.00: *Dinner*
- Tomorrow
  - 09.00-11.00: Feedback sessions.
  - 11.00-11.30: Observations and discussion (with coffee)
  - 11.30-12.30: Research Designs (part 1)
  - *Lunch*
  - 13.30-14.15: Research Designs (part 2)
  - 14.15-15.00: The role and relevance of research integrity
  - 15.00-15.30: Q&A and conclusion to the Training



# Overall aim of the training

- Part of the academic training offered in the program.
- *“The last pillar of the academic training contains specific methodology seminars that shall enable ESRs to apply and combine a variety of research methods, allowing them to conduct research in different fields of science. Since ESRs have different academic backgrounds, it is crucial that they all learn about methods they are likely to use in their individual research projects.”*



# Perspectives

You only see what you're looking for

Various filters:

- Judge
- Lawyer
- Legislator
- Researcher

# Perspective of the Judge, Lawyer

1. Bounded to positive law, at least to certain extent
  2. Specific, individual situations, cases
  3. Case, and therefore the research question, is presented by parties (judge) or client (lawyer)
  4. Judge is required make a decision / lawyer should defend client's interests (counterevidence for other party)
- Difference with researcher
    - 1. possible, but not necessary (depends on RQ)
    - 2. rarely
    - 3. and 4. not applicable

# Perspective of the Legislator

1. Draft Laws, Explanatory Memoranda (binding)
  2. Relation to Policy (politics determines, translation into rules)
  3. Seeks Legitimacy (Constitution, Human Rights Conventions, other), Support (e.g. consultation) / Testing Legal Feasibility
  4. Determine Effects Ex-Ante (e.g. ex-ante evaluation, impact assessment)
- Difference with researcher
    - 1. rarely, not binding
    - 2. not necessarily, but common
    - 3. possible, but not necessary (depends on research question)
    - 4. possible, but not necessary (depends on research question)

# Perspective of the Researcher

- Legal research, has, until quite recently, been characterised by a relatively ‘instinctive’ approach to research.
- This means that various aspects of conducting research have not always been articulated, such as:
  - Operationalizing key terms of your research question
  - Making your selected methodology explicit, and justifying this selection.
  - Discussing the role of theory in your research.
- Hopefully, we will give you some ideas as to how to better articulate these aspects of your research.



# European Code of Conduct for Research Integrity

- Reliability
  - in ensuring the quality of research, reflected in the design, the methodology, the analysis and the use of resources
- Honesty
  - in developing, undertaking, reviewing, reporting and communicating research in a transparent, fair, full and unbiased way
- Respect
  - for colleagues, research participants, society, ecosystems, cultural heritage and the environment
- Accountability
  - for the research from idea to publication, for its management and organisation, for training, supervision and mentoring, and for its wider impacts

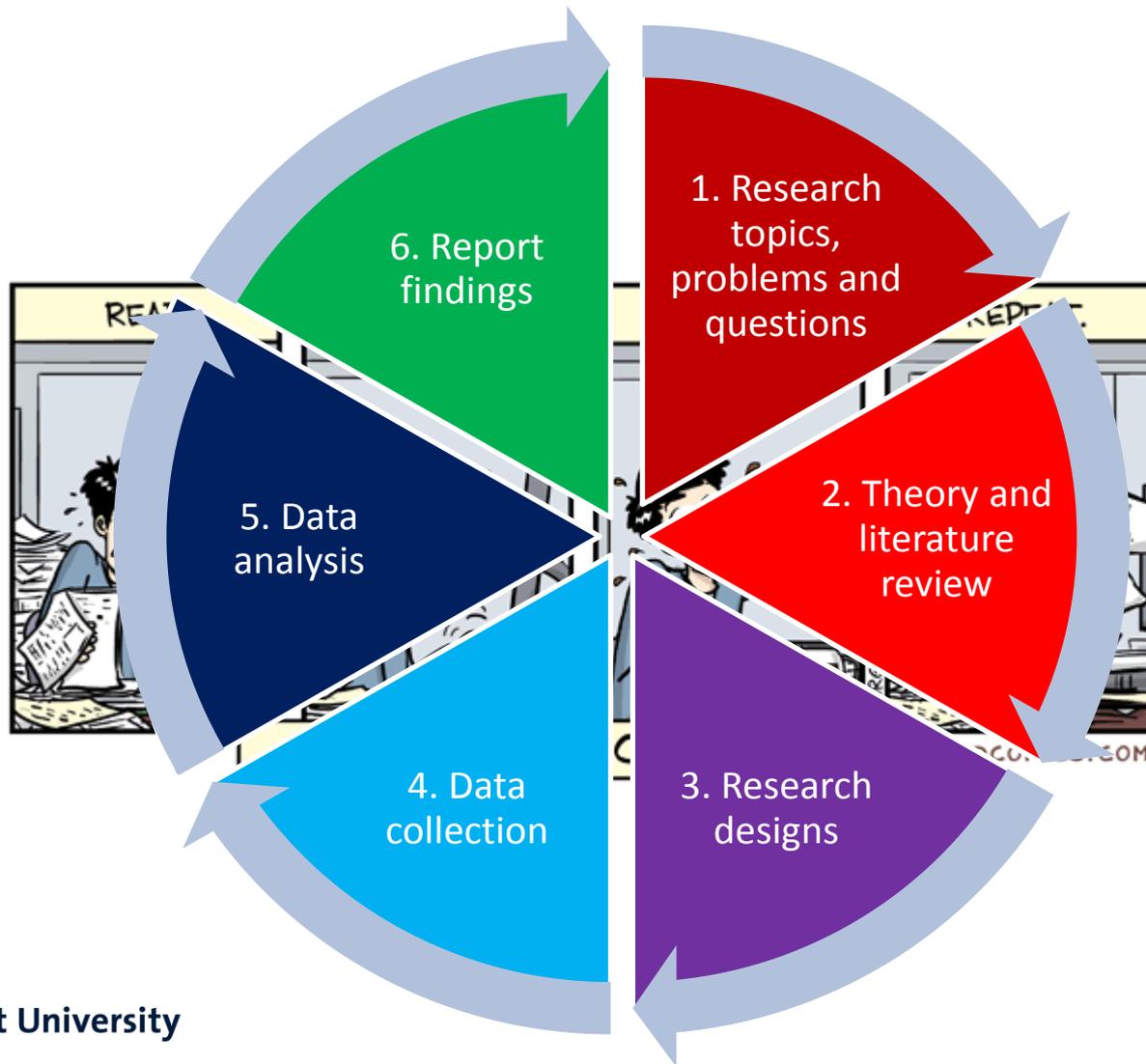


# Assignment

What obstacles could you encounter regarding the application of the principles?

- Reliability
  - in ensuring the quality of research, reflected in the design, the methodology, the analysis and the use of resources
- Honesty
  - in developing, undertaking, reviewing, reporting and communicating research in a transparent, fair, full and unbiased way
- Accountability
  - for the research from idea to publication, for its management and organisation, for training, supervision and mentoring, and for its wider impacts

# The Research Cycle



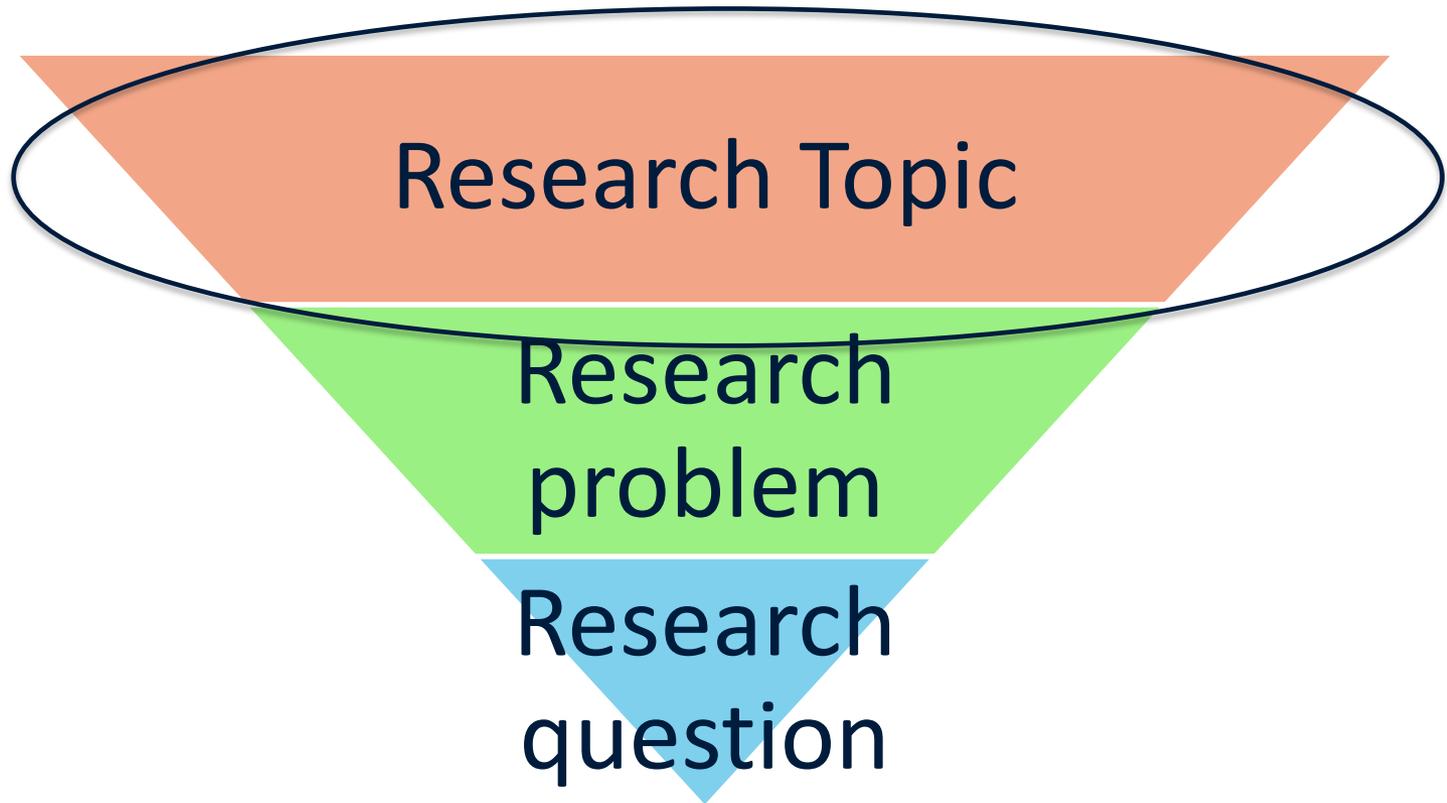
- Though there are certain phases of any research project, the process is more organic than what the cycle presents.
- In the coming two days, we will focus on:
  - Research topics/problems/questions.
  - The role of both literature and theory.
  - Research designs and methodology.
- Many of these phases are interlinked.



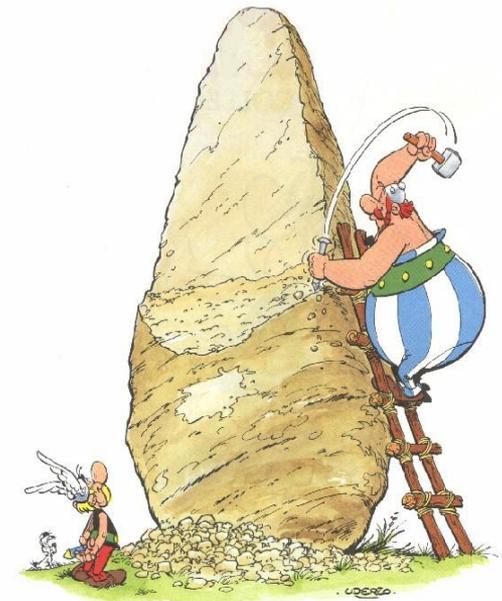
# The first step of any research project: the research topic

- A topic identifies the general subject matter of the research.
- There are different ways to come to a topic :
  - Topics that you came in contact with during your previous degree of work.
  - Think about what 'you to know/learn'.
  - Discussions in academic journals or even the popular press could spark your interest.
  - Discussion with fellow academics/supervisor, etc.
- Topics will differ based on scope or size.





- You will have to whittle your topic down, in order for it be researchable. You will likely begin with a research area (e.g. intellectual property law).
- This process can occur via the interactions with others (peers), but the main process would be to do a preliminary literature review.
- The literature can help you in various ways:
  - They can be sources of new ideas on your topic.
  - They can be sources of context
  - They can be sources of interdisciplinary insight.
  - They can be sources of substantive discussion, criticism or conflict.
  - Identify your audience.



## Steps in order to come to a research *problem*

- The literature plays an important role in narrowing down the topic:
  - It helps you to understand the state of the art.
  - Identification of research gaps that are of academic relevance
  - It will help you to better formulate your research topic (and problem).

# Possible issues with too big topics or too narrow

- To big:
  - Can you adequately cover the topic during the time available to you?
  - Too much research materials.
  - Issues with definitions.
- Too narrow:
  - Insufficient/no sources to work with.
  - Very limited output.
- To better help you in selecting your research topic, ask yourself the following questions:
  - What has already been researched.
  - What has not yet been researched.
  - And thus, which topic you are looking into.



# Some aid in the process of narrowing down

- There are various common ways to narrow down the topic (boundaries):
  - Geographical: right to fair trial in the Netherlands.
  - Time frame: the development of the right to fair trial from 1980 to 1995.
  - Population: right to fair trial for vulnerable suspects.
- But be careful:
  - Do not make the topic too locally confined (fair trial in Maastricht), or too recent (development of fair trial in 2018).

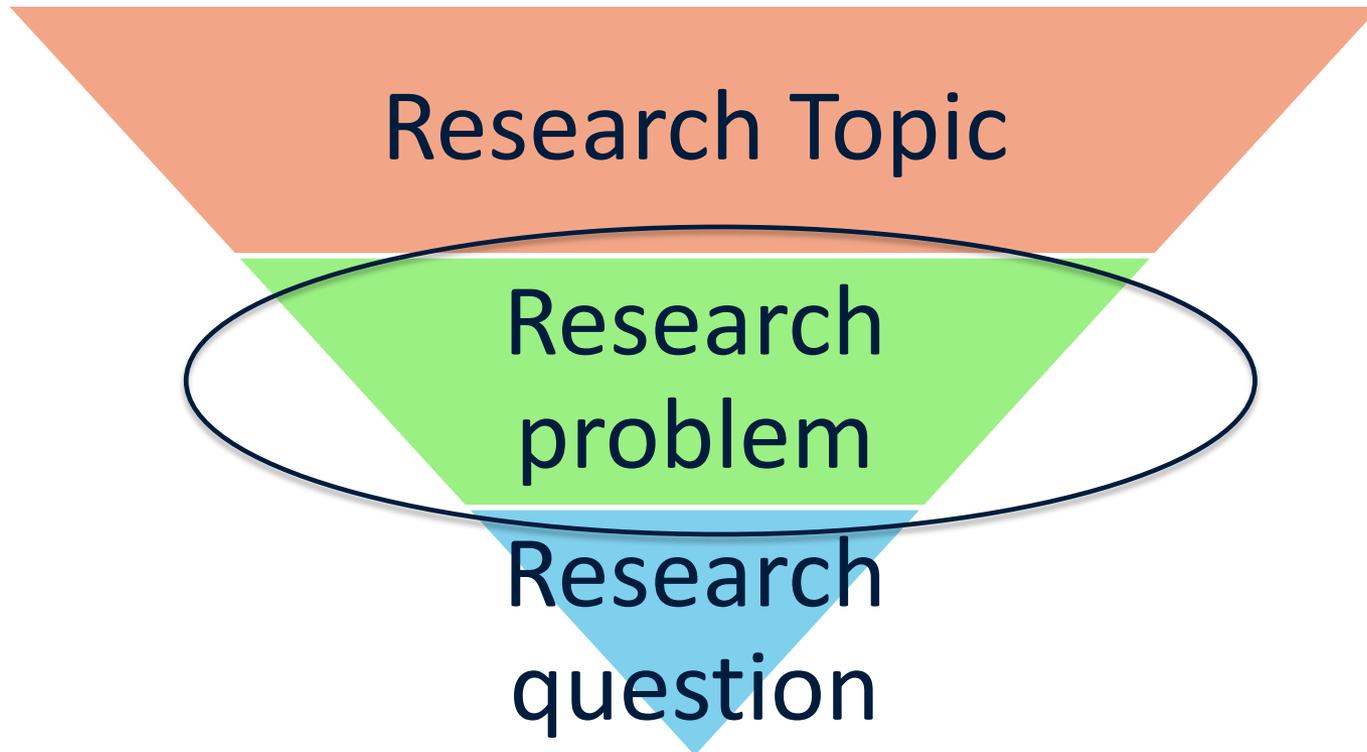
# From research topic to research problem

- Ideally, the topic will be relevant, original and doable.
- Whereas an research topic is an indicator of the substantive field that the research will focus on, the research problem refers to an area of conflict, concern, or controversy that the researchers wants to address in his or her research. It might be an issue that requires a solution.
- The research problem serves three functions:
  - It establishes the importance of the topic.
  - It creates reader interest.
  - It focuses the reader's attention on how the study will add to the literature.





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# Small Assignment

- Discuss what the difference is between a research topic and a research problem?
- Ideas on what would be a 'good' research problem?

- The research problem is distinct from the research question as the latter refers to the specific questions that the researcher wants to answer in the research, while the problem refers to the issue that takes the central position in the research.
- It is: *“A statement about an area of concern, a condition to be improved upon, a difficulty to be eliminated, or a troubling question that exists in scholarly literature, in theory, or in practice that points to the need for meaningful understanding and deliberate investigation [...] (Bryman, 2007).*
- Importantly, it will identify which specific *issue* you would like to study and will explain why the issue would need attention (*relevance*).

- The research problem directly flows from the research topic, but will go beyond simply stating the general subject matter of the topic.
- Importantly, it provides some context to the overall topic.
- The process in fine-tuning the research problem is similar to finding a suitable research topic. Again, literature should be used to fine-tune the problem. Questions that you should ask yourself here are:
  - Can you study the problem (access, time, resources, etc.).
  - Should you study the problem (advance knowledge, contribute to practice?).



- Possible pitfalls in selecting a research problem:
  - Drafting a research problem solely on a gap in your knowledge (as opposed the scientific knowledge).
  - The research problem will lead to a question that is answerable with only a yes or a no.
  - Focusing too much on a societal (or social) problem. Such problems are not the same as research problems.
  - Drafting a research problem that is too technical and insufficiently clear. Those more technical terms can come back in the methodology section → think about who your audience is.

# Embedding and Literature Review

1. What has been researched? (LR)
2. What has not been researched?  
(=problem)
3. What will I research? (=RQ)
4. Why will I research this (=relevance)

# Assignment

## Discuss

1. What might be the difference, if any, between a literature review and a regular paper that you have produced so far?
2. How does a good literature review differ from a bad one?
3. Do you see a difference between a systematic analysis of case law and scholarly literature?

# Work on your idea first, then compare to the literature (Loehle)

- Step 1: Get the germ of the idea, the feeling for a problem
- Step 2: Stare out of the window (“don’t read all the literature”)
- Step 3: Try to elaborate the idea as much as possible
- Step 4: Write a few pages, sketch a design
- Step 5: After incubation, compare your idea and problem perception to the existing literature



# What is Embedding?

- Positioning your topic in the field of study (ladder)
- Knowing who your essential others are (if everything is important, nothing really is)
- Finding out what you can safely ignore/leave aside (focus)
- Discovering not only the state of the art but also what is still unknown about the topic
- Positioning yourself and your research in a scholarly debate (which is more than a conflict between judicial decisions or commenting upon a piece of legislation)

# What is it?

- A LR= “a systematic **method** for identifying, evaluating and interpreting the written work produced by researchers, scholars and practitioners.”
- It is not a paper answering a RQ but a paper looking for a RQ!
- situates your research focus within the context of the wider academic community in your field
- Critical appraisal of the academic literature (not a summary of legislation or case law)
- Identifies a gap in the literature that your research is going to address

• FINK, A., 1998. Conducting literature research reviews: from paper to the internet. Thousand Oaks, CA: Sage., p.3.



# Why do you need a LR?

When scholars read your thesis, they will not simply assume that what you are writing is a good idea; they will want to be persuaded that it is valid, relevant and that it was worth doing. They will ask questions such as:

- What research question(s) are you asking?
- Why are you asking it/them?
- Has anyone else done anything similar?
- What method(s) did you use?
- Is your research relevant to research/practice/theory in your field?
- What is already known or understood about this topic?
- How might your research add to this understanding, or challenge existing theories and beliefs?



# Example: More than a summary

- E.g. much has been written about the system of law journal rankings in the US and the way in which a ranking might organize competition between journals in order to increase the quality of legal research

A LR could for instance try to detect:

- a) to what extent we know whether (certain) rankings actually do spur competition in the US (what **empirical** research is there on this)?
- b) to what extent there is a similar/different debate about law journal rankings in the EU or elsewhere (**comparative**) or
- c) what have been the major developments in the way (US) law journals are ranked since the 1970s (**historical**)

# Critical appraisal

When you read the sources for your LR, the purpose is not primarily to read to be able to repeat the knowledge in there (e.g. as in exams). Think critically about:

- Relevance to your topic
- Agreements/disagreements between authors
- Currency of the information
- Coverage of the topic
- Accuracy of the information
- Authority of the author or information source
- Level of objectivity of the author

# Try to find a focus/perspective

**Try to find a storyline:** consider what themes or issues connect your sources together

- Are there recurring RQ's?
- Which methods are applied in the reviews (cluster)
- Do they present one or different solutions/outcomes?
- Is there an aspect of the field that is missing?
- How well do LR's present the material and do they portray it according to some sort of theory/idea?
- Do they reveal a trend in the field?
- A raging/emerging debate?
- Pick one of these themes to focus the organization of your review.



# When a LR?

There are three stages at which a review of the literature is needed:

1. an early review is needed to establish the context and rationale for your study (topic exploration) and to confirm your choice of research focus/question;
2. as the study period gets longer, you need to make sure that you keep in touch with current, relevant research in your field, which is published during the period of your research;
3. as you prepare your final report or thesis, you need to relate your findings to the research question and to the findings of others, and try to identify the implications for theory and practice



# Example: Quality of Law Journals

## Concepts

- Peer review
- Bibliometrics
- Editorial screening

## Explanation

- Substantive
- Comparability
- In-house/  
efficient

## Associated criticism

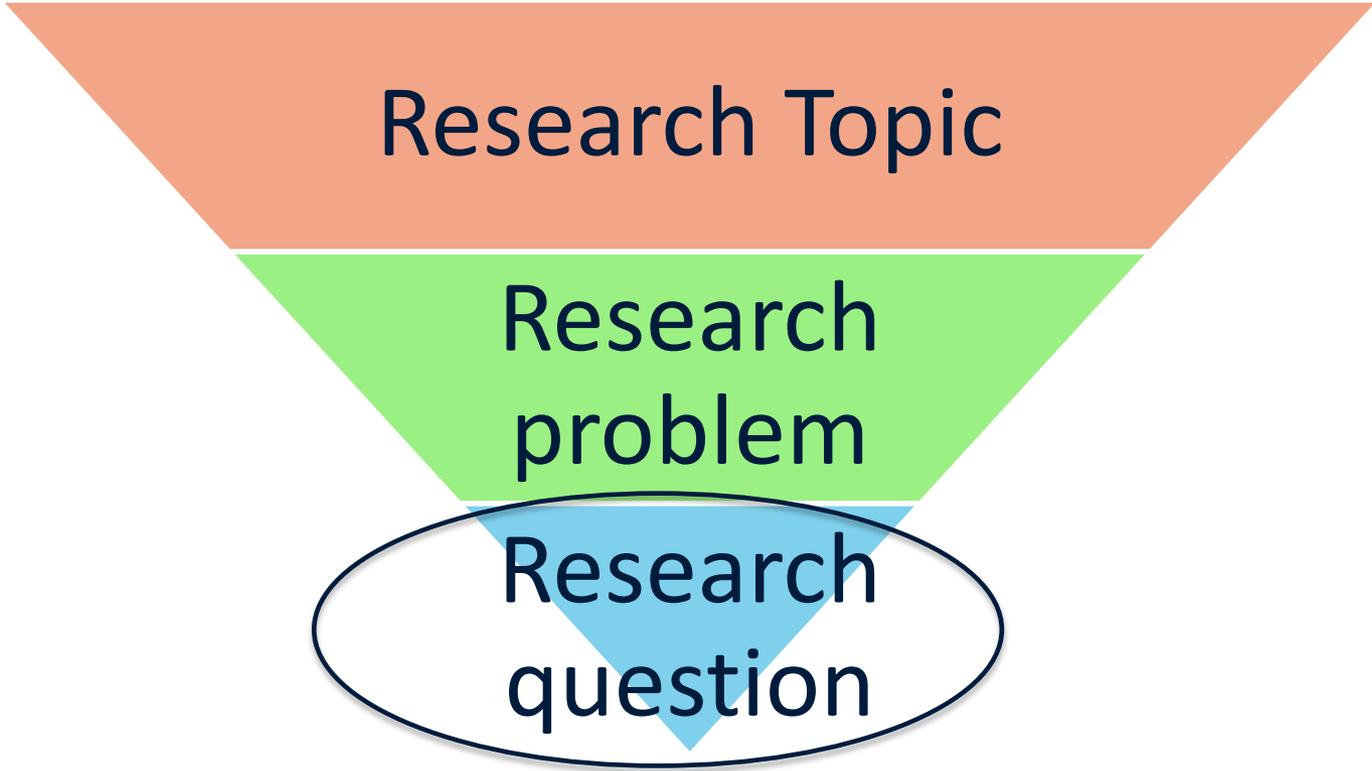
- Subjective
- Proxy for quality
- Risk of bias

# Relationship Embedding - Relevance



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Research Topic

Research  
problem

Research  
question

# Discussion

- Firstly, what is a research question?
- Which functions would the research question have?
- What types of research questions are you already familiar with?



## From research problem to research question: what is research question?

- *A compact problem statement revealing what exactly you want to do in your research*
- And followed by a related elaboration on how and why you want do it.

# The function of a research question

- Three functions:
  - Start:
    - It guides you in setting up the research project
    - Assists you in choosing the methodology
  - During:
    - It serves as a measurement tool in the process to check whether you are still on track
    - Need to align your question?
  - End:
    - It guides your reader (supervisor, committee, book audience)



# Typologies: a first distinction

- An overarching exists typology to be made: the difference between (traditional) legal research and empirical legal research.
- The moment you start thinking about the effects of laws or legal arrangements (evaluation/effectiveness) or the functioning of legal organizations, your research will move towards the empirical field. Some other questions (conceptual questions) might be more in line with legal research.

# Typologies continued

- Descriptive research questions: what is going on. Often focused on describing the state of affairs/description of facts.
  - *How is the principle nullum crime sine lege legally construed?*
  - *What are the characteristics of lone-wolf terrorism in Western Europe and North America between 2011 and 2016?*
- Explanatory: why is it going on. For empirical questions, these might be cause-and-effect related.
  - *Why does the common law of contracts require consideration?*
  - *How does the severity of the sexual abuse increase the likelihood of victims obtaining non-monetary relief?*

# Typologies continued

- Normative (should...?). Often concerned on what ‘ought to be’ or what is ‘desirable’.
  - *How should administrative discretion be exercised in the light of the requirements set forth by the CJEU?*
- Evaluative (effectiveness/outcomes). Three subtypes exist:
  - *Ex ante: Can the newly proposed Dutch legislation aimed at preventing potential terrorists from travelling to Syria contribute to the reduction of the risk of a terrorist attack?*
  - *Process: To what extent is the ‘Safer Cities 2020’ program implemented in Maastricht, and is this implementation according to plan?*
  - *Ex post: Is there any evidence that migration information campaigns are effective?*



# Typologies continued

- Comparative (two or more jurisdictions are referred to):
  - *What are the differences and similarities between the application of the right to a fair trial between the Netherlands and Belgium?*
- Conceptual (can...?):
  - *What concept of law can be derived from the debate on transnational law?*
- Questions can overlap/be combined.

# Examples which we can discuss together

- *What possibilities are there to contain the sex trafficking of Eastern European women in an appropriate way and to what extent and in which ways are the Swiss authorities already using such interventions and measures?*
- Descriptive (what possibilities/which ways) but also has evaluative aspect (are the approaches already being used). The addition of ‘an appropriate way’ seems to hint towards a normative component as well? Requires a wider range of methodologies.
- What is meant with ‘possibilities’? Legal? Policy-related? Or something else altogether? Later on, the questions speaks of ‘interventions and measures’. Is that the same?
- Does adding the term ‘appropriate way’ mean anything? Is the researcher here referring to a legal framework? Or to implementation guidelines/principles?

- *How should substantive private law react to the increasing adoption of corporate codes of conduct by companies?*
- Type of research
  - How should: indication of the normative objective and the direction (open, non-evaluative)
  - Assumption: There is no established direction that the law would take and that is assessed
- Terminology
  - Substantive private law: specification in sub-questions
  - Corporate codes of conduct: specification in the general introduction

- *How can the **cooperation** between the police and **mental health institutions** be improved when dealing with disturbed individuals?*
- Explanatory research question. Initially seems mostly empirical but can also include more legal aspects (legal frameworks underlying the cooperation?)
- Assumption present: there is already cooperation and it needs to be improved, or more fundamentally, cooperation is necessary.
- Boundary issue: where is this study supposed to take place?
- Mental health institutions? What might that include? What about the term 'cooperation'?

- ***What do we know about the effectivity of the interventions in reducing digitalized crime among youngsters and what study designs were used?***
- Research question initially seems geared towards evaluative research (effectivity) but it also appears to contain descriptive aspects (what is known about...). This descriptive aspect becomes more clear in the latter part of the question (what study designs were used).
- Again, no geographical boundary. Is this left purposefully broad?
- Are the terms such as ‘youngsters’ or ‘digitalized crime’ sufficiently specific? Probably need further concretization in the introduction.

# A few words on the role of a hypothesis

- Think about what the *function* of a hypothesis is: “*hypotheses are testable predictions. Research questions guide the inquiry.*”
- Thus the aim is to use a hypothesis to indicate what you will (empirically) test. It should not refer to a end argument or goal that you have in mind, nor to a particular assumption that you subscribe to.
- Nonetheless, a research question can lead to (a number of ) hypotheses.



# The role of sub questions

- It is not required to use sub-questions. However, if you do so, they can greatly aid you in your research in a number of ways, via the structuring thereof:
  - Steps to take to reach the end result
  - Organisation of your work, timetable
  - Structuring the book & chapters
  - Separation of different methodological approaches

# The role of assumptions in relation to your research question

- Every research builds on assumptions (*more severe punishment deters individuals from acting in an illegal manner*). A distinction must be made between:
  - Accepted assumptions
    - Not problematic
    - Do not re-invent the wheel
    - Build on the state of the art
  - Contested assumptions
    - Can be problematic if you do not make these *explicit*
    - Be open about controversial assumptions
    - Contested assumptions require a justification/theoretical background
  - Reflect on whether or not your research question contains any assumption and whether or not these need to be expressed explicitly.

# The operationalization of the research question

- Operationalization is the process of transforming a concept or variable from an abstract idea into something that can be researched. How to do so:
  - Review the literature; this can be indicative.
  - Usage of indicators or criteria. Present these in the introduction to the reader. Can also be used as measurements.
  - Discuss the meaning of terminology with peers/supervisor.
  - Depending on the type of (empirical) legal research you are embarking on; think about the independent and dependent variables.
  - See also the discussion on ‘contested terms’.

# Discussion

- Think about your own proposed research. Are there any terms that you might need to operationalize or clearly define?

# Examples of such terms

- Impact
- Perceptions
- Outcomes
- Characteristics
- Effects/effective
- Current approach
- Responsibility
- Legitimacy
- Culture
- Influence
- Practice
- Mechanism
- Consistent tendency
- Defiance
- Fairness
- Fundamental questioning
- Compatible
- Relationship
- 'Right', 'good', 'best' etc.
- Transparency



# Structuring and phrasing of the research questions

- Think carefully about the terminology you use.
  - Accepted and contested terms
  - Open terms → operationalization.
  - Different use of terms in interdisciplinary research.
  - Cherry picking of argumentation/data.
- Try to avoid research questions that result in a yes/no answer.

# What makes a research question 'researchable'?

- For every question a few issues will be encountered. Some of these are more substantive while others are more practical:
  - Deals with the structure rather than the subject matter of the question.
  - Avoid compounded questions
  - Questions that include presumptions.
  - Also beware of asking tautological questions.
  - Inclusion of 'data-collection-questions'.

# Some more practical matters

- Scope; do not be overly ambitious.
- Language used to phrase your question:
  - Keep the question as brief as possible.
  - Clarity on the words used in the question.
  - Precision; avoid vague or general research questions.
- Consider using boundaries to delineate your research.
- Relevance over interesting.

# Research Questions and their relation to the methodology

- Questions first, methods later.
- But you will need to think about your research design.
- It refers to decisions on your behalf on the kinds of evidence (e.g. what kind of data is needed) needed to address your research question. It is the link between questions, data and conclusions and should therefore not be confused with the research methods.



- Regardless, the research question will influence your methodology.
  - E.g., if you are interested in the decision-making process of judges, you might use experiments, interviews, case studies and so on (or a combination thereof).
- Be innovative, if possible, but aware of your limitations.



# Relevance

- Scientific (theoretical) relevance
- Societal (practical) relevance

# Problem Definition

- Key questions
  1. Do you know what has been written?
  2. Do you know what has not been researched?
  3. Do you know what should be researched?

# Theoretical Relevance

Do you know what should be researched?

1. Does the research add to the body of knowledge?
2. Is this knowledge important (why would research be of importance to other researchers)?

# Assignment

Ask yourself :

- (1) When would research NOT be of interest to (other) researchers?
- (2) When would research be of interest to (other) researchers?

# Identifying Theoretical Relevance in Doctrinal Research

E.g.

- Giving the law precision, coherence, and a transparent structure;
- Promoting justice and morality, as by interpreting old law in a new way;
- Promoting trust in the law;
- Promoting the globalization of law, considering, inter alia, that scholars
- Maintain international contacts; and
- Promoting stability in a world dominated by political dynamics.



# Assignment

For the research topics you selected, ask yourself :

Why would my research be of interest to (other) researchers?

# Applied versus Fundamental

- Goal of Applied Research
  - Applying existing theories or doctrines on practical problems
    - E.g. Does consumer law apply to web shops?
- Goal of Fundamental Research
  - Developing new theories, concepts, doctrines, testing doctrines / hypothesis / assumptions
    - E.g. Evaluating consumer law considering developments on the internet

# Example

- **What?**
  - Does presumption of innocence apply to athletes (e.g. Armstrong)?
- **Why?**
  - *Fundamental*: How does presumption work in 'horizontal' relationships (i.e. Private actors) / Does the type of relationship matter?
  - *Applied*: I want to improve the rules of the international doping authority, provide more certainty for lawyers and athletes (i.e. What are their rights?)
- **How?**
  - E.g. Literature search regarding horizontal application of fundamental or constitutional rights, case law analysis by international doping authority arbitration

# Assignment

- Formulate two research questions
  1. Applied research (1x)
  2. Fundamental research (1x)

# We Are Problem Solvers – A Warning

- Roscoe Pound (1870 – 1964): “social engineers”
- However: there is nothing as practical as a good theory
- **WARNING:** Before you can come up with practical solutions...
  - What is the problem?
  - How substantial is the problem?
  - For who is it a problem?
  - What is the cause of the problem?
  - Is it a legal problem? / Does the problem have a legal cause?
  - What alternatives do exist?
  - What do we know about the effects of this rule / law / practice?
- ... especially when you want to solve a practical problem
- ... especially when you have strong feelings about the outcome



# Test yourself, regularly

1. Topic: I am studying ....

2. Question: because I want to find out what, why, how...

3. Significance: in order to help my readers understand ...[a conceptual goal]

(4. Potential Practical Application: so that [law makers, legal scholars,?] might better [.....])

# Assignment

‘Pitch’ your research, following the steps below:

1. Topic: I am studying ....

2. Question: because I want to find out what, why, how...

3. Significance: in order to help my readers understand ...[a conceptual goal]

(4. Potential Practical Application: so that [law makers, legal scholars,?] might better [.....])

# Conclusion

- No such thing as a perfect research question.
- You will likely continue to tweak it as the research progresses.
- Takes time and it is an organic process!

# Questions?



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# Assignment for tomorrow

- Draft a one-to-two page document in which you explain the following:
  - What your topic is
  - What has been researched already in the field
  - What has not yet been researched
  - What your research will focus on
  - What the theoretical relevance is of this approach.
- Please send your document to [gijs.vandijck@maastrichtuniversity](mailto:gijs.vandijck@maastrichtuniversity) and [bastiaan.leeuw@maastrichtuniversity](mailto:bastiaan.leeuw@maastrichtuniversity).