Getting started with Case Research

This guide will help you when you need to:

- Understand a case citation
- Find a case, for which you have a citation
- Find cases on your assignment topic
- Distinguish the different parts of a case

A case is the judgment given in litigation. It is the judge's written reasons for the decision. It does not include the transcript of evidence given during the hearing.

I need to... understand a case citation

**Reported and Unreported Cases**

- Only a small proportion of cases are “reported” each year. Most cases remain unreported. Of these, a great many appear in “unreported judgments” databases. Still, many cases are neither reported, nor available in databases of unreported judgments. Judgments of the Supreme Courts and higher courts are more likely to be available than lower court judgments.

- Cases are chosen to be reported if they are significant in some way – for example if they develop the law or create new interpretations or apply the law to novel situations.

- Unreported cases are less important to the study and application of law, but can be useful in some circumstances. For example, very recent unreported judgments might in fact be reported later on (there is always a delay between the judgment and the publication of a reported case). Sometimes with hindsight the principles in a judgment which was overlooked for reporting become more significant as the law develops.

- The citation for a reported case looks different from a citation for an unreported judgment.

**Citation - Reported case**

<table>
<thead>
<tr>
<th>Parties</th>
<th>(Year)</th>
<th>Volume</th>
<th>Report series (abbreviation)</th>
<th>Starting page</th>
</tr>
</thead>
<tbody>
<tr>
<td>E.g.: Kesavarajah v R (1994) 181 CLR 230</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Citation - Unreported case (medium neutral citation)**

<table>
<thead>
<tr>
<th>Parties</th>
<th>[Year]</th>
<th>Court (abbreviation)</th>
<th>Case number</th>
</tr>
</thead>
<tbody>
<tr>
<td>E.g.: Shenton v Western Australia [2005] WASCA 118</td>
<td></td>
<td></td>
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</tbody>
</table>

Each paragraph of the judgment is numbered, so you can cite a specific passage by referring to the paragraph number ('pinpoint').
Old style citation - Unreported case

<table>
<thead>
<tr>
<th>Parties</th>
<th>(unreported, Court, Jurisdiction, Judge, Case number, Judgment date)</th>
</tr>
</thead>
</table>

Case citators

A case citator can assist when you are required to confirm details of a case, find the litigation history or find related cases.

FirstPoint (Westlaw AU) and CaseBase (Lexis Advance) are both citation tools, accessible via the legal databases.

Freely available case citators are Jade BarNet and LawCite (AustLii).

I need to… find a case, for which I have the full citation

Example: Kesavarajah v R (1994) 181 CLR 230

Decipher the report series abbreviation

1. CLR
   - Go to the Cardiff Index of Legal Abbreviations or use the Australian Guide to Legal Citation (AGLC)
   - Search for the abbreviation and note the full title

Search using databases

2. Use Westlaw AU or Lexis Advance to search for the case
   - Enter the party names (Kesavarajah v R) or case details (181 CLR 230)
   - If the results link to the full text of the case, click on this.
   - If not, repeat the search in the other database, i.e. if you used Westlaw AU, then go to Lexis Advance, and vice versa.
   (Different databases contain different law reports)

I need to… find cases on my assignment topic

Example:

Fitness to plead
- Identify the broader area of law covered (criminal law, procedure, etc.)
- Identify alternative terms or spellings (fitness to stand trial, unfit to plead…)
- Try FirstPoint (Westlaw AU) subject listings - on the left of the screen
- Try a legal encyclopaedia, e.g. The Laws of Australia (Westlaw AU) or Halsbury’s Laws of Australia (Lexis Advance), and look at the cases referred to.
- Try your text book or other texts on the broad area of law and look at the cases referred to.
- Search AGIS PlusText and look at cases referred to in journal articles.
- When you have identified a relevant case, use FirstPoint or CaseBase to search for that case name, then…
  - Look at the “Cases citing” section of the record to see newer cases that have cited the first case you found.
  - Click on the appropriate subject term under that case to find more cases on that topic.
I need to... distinguish the different parts of a case

- **Parties** – at the top of the report (*in italics*). Use *v* between their names. Use *R* for The Queen.
- **Catchwords** – subject headings assigned to the case
- **Headnote** – summary of the case, written by editors (not the judge). Does not form part of the case. You should avoid quoting the headnote.

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**HIGH COURT [1994.**

KESAVARAJAH ....... APPELLANT;

AND

THE QUEEN ........... RESPONDENT.

ON APPEAL FROM THE SUPREME COURT OF VICTORIA.

**Criminal Law (Cth) — Fitness for trial — Whether question for judge or jury — State law regulating mode for determining fitness — Commonwealth law regulating consequences of unfitness — Accused “insane upon arraignment” or “upon trial” — “Insane” — Function of judge when issue raised — Whether accused’s future condition relevant to determination of fitness — Failure to leave question to jury — Whether no miscarriage of justice — Whether proviso applies — Crimes Act 1914 (Cth), ss. 20a(3)(b), 20a1 — Crimes Act 1958 (Vic.), ss. 393, 568 — Judiciary Act 1903 (Cth), ss. 68(1), 79.

Section 20a(3)(b) of the Crimes Act 1914 (Cth) provided that, where a court found a person charged or indicted with a federal offence to be unfit to be tried, it was required to determine whether a prima facie case had been established that the person committed the offence. Where the court determined that a prima facie case had not been established, it was required to dismiss the charge: s. 20a1(1). It was also required to dismiss the charge where it determined that,

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**Deane and Dawson J.J.** Subject to one matter, we agree with the reasons for judgment of Mason C.J., Toohey and Gaudron J.J. and with the order which they propose.

The one matter that we disagree with is their Honours’ suggestion that, in trying the question of an accused’s fitness to plead or fitness to be tried, a jury may take into account the future, as well as the present condition of the accused. No doubt there is possible...
• **Ratio Decidendi** (reason for deciding) – students and lawyers need analytical skills to identify those passages of the judgment that state the reasons for the decision.

• **Obiter Dictum** – (remark in passing) students and lawyers need also to be able to distinguish what is not central to the decision.

For further assistance, contact ECU Library:

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