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 for a reported case

<table>
<thead>
<tr>
<th>Parties</th>
<th>(Year)</th>
<th>Volume</th>
<th>Report series</th>
<th>Starting page</th>
</tr>
</thead>
</table>

Kesavarajah v R (1994) 181 CLR 230

Medium neutral citation for an unreported case

<table>
<thead>
<tr>
<th>Parties</th>
<th>[Year]</th>
<th>Court Abbreviation</th>
<th>Case number</th>
</tr>
</thead>
</table>

Shenton v Western Australia [2005] WASCA 118

Each paragraph of the judgment is numbered, so you can cite a specific passage by referring to the paragraph number.

Old style citation for an unreported case

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

Case Citators: Firstpoint and Casebase are both citation tools published by Westlaw AU and LexisNexis AU respectively. Freely available case citators are available via Jade BarNet and Austlii (Lawcite). A citator can assist when you are required to confirm details of a case, find the litigation history or find related cases.

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

*Kesavarajah v R (1994) 181 CLR 230*

- **Decipher the report series abbreviation** (CLR)
  - Go to the Cardiff Index to Legal Abbreviations
  - Search for your abbreviation, and note the full title.

- **Look up the report series title in the Library catalogue or Library OneSearch**
  - Eg do a title search for Commonwealth Law Reports.

- **If there is a record for the report series, then**
  - Click through to the online version if it exists, or
  - Note the call number (which should begin with R for Reference).

- **If there is no record for the report series, then**
  - Go to FirstPoint or LexisNexis AU and search for the case name.
  - Go to the Library home page > Databases > click on the relevant database title.
  - Type in the case name (use and instead of v in Casebase, leave v out in Firstpoint)
  - Check for alternative citations for that case name (often a case is reported in several places, and an unreported version is usually available)
  - If there is a link, click through to the full text of the case.
  - If there is no link, note all of the citations and this search process again.

I need to… find cases on my assignment topic.

*Fitness to plead*

- Identify the broader area of law covered (criminal law, procedure).
- Identify alternative terms or spellings (fitness to stand trial, unfit to plead…).
- Try FirstPoint’s subject listings (on the left of the screen).
- Try a legal encyclopaedia and look at the cases referred to (eg Lawbook –

- Try your text book or other texts on the broad area of law and look at the cases referred to.

- Search AGIS Plus Text and look at cases referred to in journal articles.

- When you have identified a relevant case, use FirstPoint 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 all cases FirstPoint has on that topic.

I need to... **distinguish the different parts of a case.**

**Parties** – at the top of the report. 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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**230**

**HIGH COURT**


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), 20(4) — 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 on indictment 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. 20a(1). It was also required to dismiss the charge where it determined that,
- **Judgments** - sometimes judges write joint judgments, and sometimes there are a series of separate judgments. Be aware that a judge can dissent, i.e., s/he may write separate reasons and come to a different conclusion from the majority.

- **Ratio Decidendi** (reason for deciding) – students and lawyers need the 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.

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DIANE AND DAWSON JJ. Subject to one matter, we agree with the reasons for judgment of Mason C.J., Toohey and Gaudron JJ. 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
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