



UTS:Law

Guide to Written Communication

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UTS:LAW GUIDE TO WRITTEN COMMUNICATION

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Introduction

Clear and concise written communication is critical for lawyers. All law graduates must develop and demonstrate strong spoken and written communication skills to inform and persuade different audiences. Communication is one of the six Learning Outcomes (graduates attributes) UTS:Law students possess by the time they complete their degrees. Communication skills also underpin all Learning Outcomes. Throughout your degree your effectiveness as a writer and a thinker will be assessed informally through your writing for learning activities, and formally in assessment tasks and exams. All the writing you do as part of your course will provide valuable training for the demands that will be made on you as a practising lawyer.

UTS:Law is committed to helping all students achieve high standards of professional communication. The aim of this guide is to answer some of the questions and address some of the common issues that arise about the nature of academic and legal writing for students studying law. The guide provides information about the process of written legal communication. It therefore covers: researching, reading and understanding assessment tasks; as well as writing and referencing accurately using the footnoting system recommended by the *Australian Guide to Legal Citation (AGLC)*. This guide has incorporated feedback from teachers and students to make it relevant to both undergraduate and post-graduate law students. We wish you great success with your writing during your course at UTS:Law and beyond.

Bronwyn Olliffe

Associate Dean (Teaching and Learning)

UTS:Law

Writing and UTS:Law: Why a Guide to Written Communication?

Written assignments form a significant part of students' assessment for a UTS:Law degree. Students are expected to write well structured and convincingly argued essays; respond to problem questions on points of law; and write clear case notes. Students also need to write essays and answer problem questions in exams.

Lawyers produce a wide diversity of written work beyond the tasks referred to above. Although this guide does not cover every type of document you may need to write (such as letters to clients and file notes), the reading, writing and reasoning skills you develop while completing assessment tasks throughout your course will be of invaluable assistance in your professional life. This guide will provide a basic understanding of those writing conventions.

For postgraduate students who may have already developed sound writing skills, legal writing is often different to other disciplines, and this Guide is a useful resource for developing writing skills for a legal professional and for developing a professional identity as a lawyer.

Australian Guide to Legal Citation (3rd ed)

While studying law at UTS you will be expected to properly cite authority to support your suppositions of law and properly reference other people's work when adopting or discussing their ideas. UTS:Law students are expected to adopt the style of legal writing found in the ***Australian Guide to Legal Citation (3rd ed)*** ('AGLC'), which is published by the Melbourne University Law Review.

The most recent version of the AGLC is found at:

<http://www.law.unimelb.edu.au/mulr/aglc>

The AGLC can be downloaded to the desktop but it cannot be printed off. It is important to become familiar with the AGLC as it covers all the different text types you may encounter and will need to reference in your writing throughout your degree. For example, you will need know how to reference:

- cases
- legislation
- journal articles (both online and print)
- websites
- books

Included in this guide is an overview of how to cite the above sources. This information has been adapted from the AGLC in order to show how citations are constructed, but your first point of reference for all citations will be the AGLC.

Academic Responsibility

Being part of the academic community involves respecting the opinions and arguments of other people. Your work will rely, in part, on the research that has come before you by others in your field. Correctly acknowledging the work of others in your writing is a requirement for all of your writing.

Referencing, and accurate citations are extremely important in academic and legal writing. The reasons for this are:

- In any legal writing a statement of law must be supported by citing a legal authority, such as a statute, a regulation, a case or any other authoritative text.
- When writing in an academic context it is expected that evidence will be provided to support arguments, as well as to build upon relevant previous work in the area. This is done by referring to the literature in a way that provides links to evidence and clear directions for those that wish to follow these.
- The work of others must be acknowledged . In Australian academic culture it is considered wrong to appropriate someone else's opinion without properly acknowledging the source (this is known as **plagiarism** and is dealt with very seriously by the University).

Plagiarism and Academic writing

Part of your responsibility as a member of the scholarly community is to accurately acknowledge the work of others. As a law student, knowingly plagiarising and thereby infringing these rules can have an impact on your professional life. Plagiarism is academic misconduct. When law students apply to be admitted to practise law, there is a requirement that past conduct, including academic misconduct, be disclosed. Acknowledging sources correctly is an extremely important part of academic and legal writing. For information regarding academic misconduct and what constitutes plagiarism in the law faculty go to the faculty website:

<http://www.uts.edu.au/current-students/current-students-information-faculty-law/assessment>

It is very important that you read and understand the information on plagiarism.

There are penalties for plagiarism and other forms of cheating set out in the University Calendar.

For more information on the definition of plagiarism and how to avoid it, please refer to the University's 'Avoiding Plagiarism' website and tutorials:

<http://www.ssu.uts.edu.au/helps/resources/plagiarism/>

*Note that the citation examples on 'Avoiding Plagiarism' website are not in the AGLC style. The University Calendar can be found here:

<http://www.uts.edu.au/about/uts-governance/official-publications/uts-calendar>

The library has a very wide collection of excellent law related resources to help you with your research and writing, including law databases, law study guides and past exam papers on its website: <http://www.lib.uts.edu.au/students/my-subject-resources/study-guides/law>

The UTS Library website also provides information and workshops about using Endnote, free bibliographic software you can use to manage your referencing and footnotes throughout your course. At UTS the legal referencing style available for use with EndNote is AGLC (UTS). This style is based on the [AGLC](#).

Find out about endnote on the library's website at:

<http://www.lib.uts.edu.au/help/referencing>

HELPS (Higher education language & presentation support)

UTS is committed to developing and supporting students' English language proficiency throughout their courses of study.

HELPS is a free student service that provides English language and academic literacy support to UTS students in various ways, including workshops, one-on-one consultations and resources.

HELPS supports students in their writing and presentation skills.

Visit the website at <http://cfsites1.uts.edu.au/ssu/staff/helps.cfm>.

Reading skills: an essential part of good writing

Good writing skills can be learnt from reading widely. One of the best forms of preparation for academic and legal writing is to read published articles in refereed journals and modern case law. This enables readers to become familiar with the style and structure that are common in most academic writing.

It is essential to read articles that are directly related to your essay task or research question for two purposes:

- to gain insights into the opinions and reasons for the opinions of other scholars; and
- to learn from their writing – to look at the structure of the introduction, how the purpose is stated, the use of subheadings, the sequence of reasons in an argument, the structure of the conclusion.

Before looking at how to write for assessment in law, it is important to learn to be selective about what – and *how* – to read during your law degree.

How to manage the amount of reading you must do

- The study of law involves a lot of reading. Often students can feel overwhelmed by the amount of reading they must do. This raises two particular problems: the volume of reading that will have to be done and understanding what is read.

Read strategically

Select your readings carefully. Sometimes it is just not possible – or necessary – to read every single word in your textbook, or an entire case. Nor do you have to read in full every textbook or case that is mentioned by your lecturer or listed as a ‘recommended reading’ in your subject materials.

The following are some tips that may help you to read strategically.

What to read

You should ensure that you read the following in full:

- the essential readings listed in your subject outlines or supplementary materials
- leading cases relevant to the subject you are studying. Often these are specifically listed or emphasised in your subject outlines or supplementary materials. Lecturers will often clearly flag a case that is very important.

You can be more selective with other materials. Often subject outlines and supplementary materials provide lists of recommended readings that can be used to augment your essential readings.

How to read strategically

Sometimes the volume of essential readings can seem overwhelming. It is not uncommon for essential readings to consist of multiple chapters per week from a text book of several hundred pages, or a leading case that is several hundred pages long. The key to reading these strategically, is to look for linguistic signposts in the text that direct you to the most relevant sections. Good writers use signposts to guide their readers.

How can you evaluate the relevance of an article, chapter or case, to your purpose?

- Read the abstract (articles) or head note (cases). This will give you a brief overview of the main issues addressed in the text.
- Read the introduction – identify the topic, purpose, scope, background (not necessarily in this order).
- Scan any headings and sub-headings.
- Scan the topic sentences of each introductory paragraph.
- Read the conclusion/s.
- If you are reading a case, start first with the majority judgments.
- Text books always have a table of contents at the front of the book and an index of subjects at the back. Use both to locate exactly where in the book you need to read.

However, even though it is better to read strategically than to read redundant material, study in law does require *a lot* of reading and sometimes, for a full understanding of the principles, you will need to read the entire case or the entire chapter or you need to read the material several times to understand its content. This is a matter of judgment and you will become better at choosing the most relevant materials as you progress.

Example

Read the sample text below. It is taken from a peer reviewed journal article. It is written with clear signposting showing:

- strong topic sentence
- focus and scope
- organisation of ideas
- well-defined position/argument.

It will be seen that a quick glance over the introduction, noting the signposting provided by the author, gives you an idea of the content of the article. If you were assessing whether it is an article worth reading in support of your studies, you can see how you can quickly evaluate whether it would be worthwhile to read the entire text.

! *Note: Sections of the text are **bolded** to show you signposting language, do not use bold when you are writing assessment tasks*

Contractual Good Faith: Can Australia Benefit From The American Experience?

Introduction

The existence and enforceability of contractual good faith obligations seem less in doubt in Australia than ever before. Recent decisions in different jurisdictions reveal an increasing trend for courts to recognise and uphold express obligations and implied obligations of good faith. While there has been a greater acceptance of express and implied good faith obligations, there is still some uncertainty as to the meaning of 'good faith' and the actual content of the obligation in any context. **This article considers** the different meanings given to 'good faith' in Australia, **and compares** those with 'good faith' in jurisdictions in the USA,

Strong topic sentence

Focus and scope

which has incorporated good faith in contract law for some time, both at common law and through codification, such as the Uniform Commercial Code. Some Australian judges have tried to bolster their decisions for incorporating good faith by reference to the American experience. **This article considers the use that is being made of American cases, and then considers the various meanings of 'good faith' used in America and Australia. It reasons that Australian law will not benefit significantly from the American experience, and goes on to argue that the best meaning of 'good faith' is 'honesty' and is inherent in contract principles generally. Most often, 'good faith' will be seen in the process of construction.**

Organisation of ideas

Well-defined position / argument

Use of American Experience in Australian Decisions

Sub-headings clearly indicate what is being discussed and where.

It is generally thought that the decision of Priestley JA in *Renard Constructions (ME) Pty Ltd v Minister for Public Works* started the development of good faith in contractual performance in Australia. In his judgment, Priestley JA spends considerable time discussing the position in the USA, including the UCC. Since then, other courts have often approved Priestley JA's discussion or added further references to American cases.¹

Reading in preparation for an assignment

If you are reading in preparation for an assignment, make a careful analysis of the topic set for your assignment and continually consider the relevance of the material you are reading to that topic.

Be aware of the distinction between:

- primary sources of law (statutes, regulations and case reports) these are (your) foundation resources;

¹ Elisabeth Peden "Contractual Good Faith: Can Australia Benefit from the American Experience?," (2003) 15 Bond Law Review 186

- secondary sources of law–journal articles, books and other publications (secondary material is commentary upon the primary material such as text books or journal articles which write about the law).

Comprehending what you read, connecting ideas and recognising arguments.

Being an active reader means reading with a clear purpose in mind, thinking about why you have been asked to do the reading and how it relates to your subject topics.

Ask yourself:

- Why you have been asked to read a certain case (chapter, article, extract)?
- What is the topic or legal principle you are currently studying?
- What are the objectives of this topic?
- What are you meant to have achieved in terms of learning objectives by the time you have completed this topic?
- Are there discussion starter questions set by your lecturer that can frame the reading?

Learn to identify:

- the writer's arguments
- the reasoning of the decision
- the principles relied upon by judge or author
- the differences in points of view between one author and another and between one judge and another. In your writing you will be expected to attempt to articulate those differences, and either reconcile them or support one view against another.

Learn to evaluate the authority of the text

Ask yourself:

- What is the authority of this text?
- Should I give it much 'weight'?

For example a magazine article may not have the same authority as a legal case book which contains commentary on legal materials. A decision by a single judge sitting in a foreign jurisdiction will generally not be as persuasive as a unanimous decision of the High Court of Australia.

Learn to read critically

You should not uncritically accept a point of view or piece of information just because it is stated in a book or article.

Ask yourself these questions:

- Is the argument justified in the light of the source material?
- Has it been rendered obsolete by later research or law?
- If reading judgments, consider whether the ratio of the case is consistent with other decided authority and with logic.

It is essential that you are capable of analysing on its merits any information or contention put to you, in the context of the sources from which it is drawn, and then form your own opinion as to whether it is a valid and sustainable argument.

Dealing with difficult texts

Specialised text books: if a text is too dense or there are too many concepts you are unfamiliar with, go back to basics and look at a more generalised text book on the subject that may clarify the reading for you.

Journal article: similar problems can arise with peer reviewed journal articles. Sometimes it helps to read a review or a response to an article or an author to provide a different perspective on the topic being addressed in the article.

Complex cases: search for case notes in academic journals. In a case note, the case will have been summarised and the most important points will have been identified. It will also contextualise the case with respect to existing law.

Writing

Writing and reading skills inform one another and by reading widely from journal articles, seminar materials, selected readings, books and cases you will become familiar with the language of law. You will be expected to produce a range of different text types including: case notes, research essays, and responses to scenario problems. This section of the guide aims to give you tips on writing that you will use when writing for any purpose in your law degree. Tips more specific to particular assessment types are provided at the end of this guide.

There is more to academic and professional legal writing than simply putting down information in any order. You will be expected to develop an argument and to show the relationship between the ideas you are expressing, your writing must therefore be *cohesive* and demonstrate *coherence*.

- **Coherence:** means the essay or paper makes sense to the reader; it is logical and easy to follow.
- **Cohesion:** refers to the way ideas are related to one another. This is achieved by ensuring that your writing contains *transition signals* throughout.
- **Transition signals:** help to create a sense of cohesion by indicating relationships between ideas and connections between sentences. They have many functions including signalling: sequence, chronology, consequence cause and effect, and contrast. See: <http://www.lc.unsw.edu.au/onlib/trans1.html>

This section of the guide aims to give you tips on writing that you will use when writing for any purpose in your law degree. Specific tips for particular assessment types are provided at the end of this guide.

Some basic rules of academic writing

- Cite case law or legislation for all propositions of law.
- Acknowledge all the references you use.
- Do not use colloquial language or slang. Use a more formal tone and an objective register.
- Write words in full and avoid contractions.
- Do not use abbreviations that have not been introduced in full first.
- Do not use colourful or strong emotional language.
- Do favour the active over the passive voice.

The Importance of Plain English

Students are expected to use a level of formality in their language and employ the use of plain language where appropriate. The use of plain language is part of an effort to simplify the language of legal writing and make the language of law more inclusive and to the point. This does not mean that the language is simplistic or that specialised legal terms with very specific meanings are not used.

In summary writing in plain English can be achieved by:

- choosing the shortest appropriate word, and avoiding pretence or affectation
- trying not to adopt a 'legal' tone or use too much legalese.

Example:

The following:

I am in agreement with your decision. You would be wise to effect an immediate termination of the contract.

Can be re-written as:

I agree with your decision. You would be wise to end the contract immediately.²

² Ros Macdonald, and Deborah Clark-Dickson, *Clear and Precise writing for Today's Lawyers* (Thomson Reuters, 2009)

Plain English resources

Read more about the practice of plain language.

For additional information about plain English and academic writing see also:

- M M Asprey, *Plain language for lawyers* (Federation Press, 2010)
- Terry C M Hutchinson, *Researching and writing in law* (Thomson Reuters/Lawbook Co, 2010)
- Martin Cutts, *Oxford Guide to Plain English* (OUP 2nd ed 2004)
- Rupert Haigh, *Legal English* (Cavendish Publishing, 2004)

All books are available from UTS library.

Expressing your opinion

You must form your own opinion. Your opinions will be subjected to the same critical tests that you are asked to apply to the views of others. In the law, the better informed opinion will carry more weight and command more respect.

The sincerity of your opinion is one matter: its legal quality is another. Do not confuse the two, and expect that you will be rewarded for sincerity or earnestness.

Writing your first draft

Writing is an iterative process of slowly building and improving on an argument. Do not expect that your first effort will be acceptable! No matter what you have to write for assessment, considerable thought and effort should go into the drafting and you should always be realistic enough to appreciate that what you have done could be improved upon.

*** TIPS ***

- Prepare a plan first. Organise your ideas or issues you want to address in a logical order. Set them out as headings. Consider how you will lead from one issue into the next.
- Start writing. Only when you have something on paper will the assignment take any shape. Be aware that there are many false starts when writing; this is normal and part of the process. You might start to write but then realise that there is something else you could research or consider meaning that you must stop and do further research. But soon enough you will achieve critical mass and the writing will start to flow.
- Aim to prepare a draft that can then be improved on. A first draft, for instance, might be a bit longer than a final work, editing work will then involve trimming, rather than the more difficult task of supplementing.

Structuring written work

In most assessment tasks, it will be essential to structure your writing with:

- an introduction outlining the nature or scope of the writing.
- the body of the text for discussion or analysis of the problems or questions. This is often broken down into parts by use of sub-headings.
- a conclusion that briefly sums up the discussion and states the final position to which you have arrived.

Headings and sub-headings

Think about how to structure your paper in order to present your material in an easy to understand layout. Headings, which indicate the structure of your essay, are useful signposts to the reader because they identify what and where issues are discussed in your writing.

Setting out headings before you start writing will also provide a structure and direct your writing. If you create a list of headings and sub-headings before you start writing, stop and consider how you have ordered them: do they lead logically and persuasively from one issue into the next?

Introduction

An introduction helps to orientate the reader, it is an important first step in writing a well structured paper. It is essential to have an introduction which:

- identifies the issues raised by the question
- states your topic and what position you will take on it
- briefly states the major points you want to write about
- outlines how your essay will be organised
- includes definitions if appropriate and identifies assumptions .

Example

If a question asks you to assess the advantages and disadvantages of a case, it is not sufficient to say:

This essay will assess the advantages and disadvantages of [case].

You need to also give an outline of the *scope of your argument*:

In this paper the advantages and disadvantages of [x] are examined. It is argued that the critical role of [one advantage] supports a shift in policy to implement [x], notwithstanding the presence of other disadvantages.

Further examples:

This paper considers/ does not consider ...

This paper will focus upon ...

The [issue] will be explored ...

This paper will address [three] issues which arise from [case]. First, [issue]. Secondly, [second issue]. Finally, the question of [issue] remains unsettled.

In the sample text below the choice of language indicates the aim, scope, main argument and structure of the paper. Being able to identify the staging will also help you evaluate the relevance of the text to your topic.

! *NOTE: The relevant parts of the text have been bolded to demonstrate how to write a good introduction. Do NOT use bold when you are writing an essay.*

Introduction

In what has recently been described as a classical statement of the doctrine of estoppel in pais, Dixon J said in *Grundt v Great Boulder Pty Gold Mines Ltd* that 'the basal purpose of this doctrine ... is to avoid or prevent a detriment to the party asserting the estoppel'. **The aim of this article is to consider** the extent to which....**doctrines of estoppel operating in Australia today**. While some judges and commentators have advocated unification of those doctrines.... **This article argues that** protecting against detrimental reliance can, and should, be seen as that unifying force.

The first part of this article for the purpose of the subsequent analysis ... **will summarise** the current state of estoppel in Australia today

The second part of the article will briefly outline the three competing purposes of estoppel which have been articulated by judges and commentators.

The article concludes that the conflicts ...³

See also the example in the 'How to read' section on page 5 above.

Body

In the body of your writing you will expand on the outline of the argument you provided in the introduction. Each paragraph should focus on an aspect of the argument or problem supported by several sentences containing evidence. Use subheadings between sections of the body to signify information about the content to the reader.

*** TIPS ***

- Begin with your strongest argument.

³ Andrew Robertson, 'Towards a Unifying Purpose for Estoppel' (1996) 22 Monash University Law Review 1

- Discuss and evaluate the major points you want to make with evidence from the readings.
- Use a topic sentence to set up each paragraph.
- Systematically discuss one point per paragraph.
- Move in a logical sequence from one point to the next.
- Show the connections between ideas with linking words. eg: 'However ...', 'In contrast to ...', 'In addition ...', 'Furthermore ...', 'Taking into consideration ...'
- Conclude paragraphs or sections of your writing with a sentence that relates the issue discussed back to the topic.

Examples:

[The issue of] is currently unresolved.

It is well established that ..., or It is commonly understood that ...

Commentators agree that ...

There is a difference of opinion amongst commentators in relation to ...

The question of [x] was considered in [case name]. The court held/ Harris J held ...

The difficulty which this gives rise to is this: ...

Under Australian law, the elements of this doctrine were established/ discussed in [case name]. They are: ...

[Case name] has been approved and applied in several recent cases: [case], [case] and [case].

Paragraphs

Any written work should be presented in paragraphs. A paragraph is a group of connected sentences about one idea. Each paragraph should begin with a topic sentence that either refers back to the previous paragraph and expands on the ideas expressed or introduces a new idea. Cohesion is created by showing relationships between ideas indicated by transition signals repeating key words and referring back to the subject of the paragraph. To write essays at university level, and to develop an argument that can satisfactorily deal with issues, it is imperative that you use coherent paragraphs. The format of a paragraph signals to the reader that it represents an integrated chain of sentences, and must be read as a whole.

It is rarely possible to develop your ideas and to discuss the ideas of others adequately unless you spend more than three or four sentences on each of the matters you have to consider. Do not make each sentence a separate paragraph: this makes your essay disjointed. While it is tempting to reduce your work to a series of dot-points – especially when dealing with a strict word limit – this seriously inhibits your capacity to demonstrate to the marker that you can persuasively, elegantly and thoroughly make a point.

Concluding sentences

The concluding comments to each paragraph or section of your essay should draw out the main points and make sense of any conflicting opinions and findings.

Examples:

The key findings in relation to X seem to be ...

The significant issues with respect to X appear to be ...

The fundamental problems identified by existing research are ...

The most important factors associated with X can be categorised as ...

The noteworthy features of X are ...

The most frequently mentioned drawbacks are the following:

The predominant view appears to be ...

The crucial factors related to X seem to be ...

Conclusion

It is also essential to finish the essay with a clear conclusion, which summarises the arguments you have made or problems you have identified. The conclusion:

- should be brief. It should summarise your main arguments and state clearly your conclusion.
- **cannot** introduce any new argument.
- must be logically consistent with your argument.

Examples

In conclusion by analysing Y it has been argued that X

The concept of [x] has proven difficult to define. In [case] it was described in terms of [description]. However, in [case] it was treated as [having a broader/ narrower scope].

It is therefore logical to argue that because ofit is likely to be held that

After considering these factors I would advise Smith to

Writing about cases

Writing about cases employs particular language and particular writing conventions.

Examples

A trial before a single judge (i.e. not an appeal) can be described as a trial **or** 'at first instance'. An appeal decision is described as being 'on appeal':

At first instance, White J awarded the plaintiff damages. On appeal, the New South Wales Court of Appeal upheld the decision of the trial judge.

To describe what a judge decided, write:

Gregg J held ...

Gregg J found ...

Where you wish to refer to the reasons of a judge in a court of appeal, refer to the judge and note whether the other judges agreed with that judge, or whether that judge was in dissent. For example:

In *Harris v Smith*, Gregg JA (with whom Smiles JA and Frown JA agreed) observed that ...

In *Harris v Smith*, Gregg JA (in dissent/ dissenting) held that ...

Referring to judicial officers

 See AGLC, r 2.9

Sometimes you will have to identify a particular judge – or judges – in your writing. For example, if you quote from a case you must cite the judge(s) from whose judgment you have taken the quote.

To properly refer to a judicial officer, refer to their surname followed by an abbreviation denoting their title. Following are some examples that are commonly encountered (Adapted from table in AGLC, r 2.9):

Type of judicial officer	Abbreviation	Plural abbreviation form
Trial/single judge	J	JJ
Judge of appeal	JA	JJA
Chief justice	CJ	n/a
Chief Judge in Equity	CJ in Eq	n/a
Chief Judge at Common Law	CJ at CL	n/a
Acting trial/single judge	AJ	AJJ
Acting judge of appeal	AJA	AJJA
President	P	n/a
Lord	n/a	n/a
Lord Justice	LJ	LLJ
Viscount	V	n/a
Vice-Chancellor	VC	n/a

Use the plural abbreviation form when referring to joint judgments or otherwise collectively to more than one judge.

Examples

In *Smith v Harris*, Hamilton J held that ...

In these passages Sheller JA identifies a matter of some commercial significance. ...

In *Harris v Digital Pulse*, Mason P dissented from the majority. ...

On the other hand, Brennan CJ was of the view that ...

In *Butcher v Lachlan Elder Realty Pty Ltd*, the majority judgment consisted of Gleeson CJ, Hayne and Heydon JJ. ...

Owen JA agreed with the joint judgment of Wheeler and Pullin JJA.

Writing about legislation

Writing about legislation, like writing about cases, employs particular language and particular writing conventions.

Examples

An action taken in respect of legislation because it is authorised or mandated by a particular section is often described as an action taken ‘under’ or ‘pursuant to’.

Having taken into account the evidence and submissions, I decided that the correct or preferable decision pursuant to section 69A(3) of the Act was to affirm the decision of the Conference Registrar in relation to Items 1 - 6 and to disallow the claim for \$261. ...

For the section to apply the requirements of both subsections (a) and (b) must be satisfied: that is, the applicant must both have been invited to comment on or respond to information under s 359A (s 359C(2)(a)), and must not have given the comments or response before the time for giving them had passed (s 359C(2)(b)). ...

Liability to pay damages for misleading and deceptive conduct in trade or commerce used to be found under *Trade Practices Act 1974* (Cth), s 82. The equivalent liability is now found under *Australian Consumer Law*, s 236. ...

A statute that is no longer in force is referred to as ‘repealed’.


Section 121(1) of the Workers Compensation Act 1987 was repealed by the Workers Compensation (Compensation Court) Amendment Act 1989, sch 1, cl (14). The Compensation Court (Amendment) Act 1987, sch 1, cl (4), repealed s 18(3) of the 1984 Act. It was however re-enacted in substantially similar form as s 121(1) of the Workers Compensation Act 1987. ...

In *Butler v Attorney-General* (1961) 106 CLR 268, a majority of the High Court (Kitto, Taylor and Menzies JJ, Fullagar and Windeyer JJ dissenting) held that s.32(5) of the *Public Service Act 1946* (Vic) had impliedly repealed s.10 of the *Discharged Servicemen's Preference Act 1943* (Vic). ...

Referring to authors

 See: AGLC, r 1.14.1

If you refer to an author in the body your discussion (or, in rarer cases, where you provide extra commentary in your footnotes), you may refer to them by their surname only, or with an honorific title.

 Examples

The possession of the bailee is and must be distinguished from the possession of the owner and that of the thief by the fact that the bailee as bailee makes no accompanying claim to or assertion of dominium, but accepts a continuing interest of a previous owner or possessor. Street, however, takes the matter further. ...⁴

More fundamentally, as Galanter argues, “justice is not primarily to be found in official justice-dispensing institutions”. ...⁵

As might be expected, both in his judicial decisions and in his extra-curial writing, Sir Anthony Mason has addressed the issue of interpretation of the Constitution many times. Most recently he did so in an essay entitled ‘The Interpretation of a Constitution in a Modern Liberal Democracy’. In that essay, Sir Anthony Mason classified various approaches to the interpretation of the Constitution: ...⁶

To find out how to refer to judicial officers in your writing, see ‘Referring to judicial officers’ at page 24 above.

Quotes

 See AGLC, r 1.5

⁴ A E S Tay “The Essence of a Bailment: Contract, Agreement or Possession?” (1966) 5 Sydney Law Review 239 239

⁵ Ronald Sackville “Some thoughts on access to justice” (2004) 2 New Zealand Journal of Public and International Law 85

⁶ The Hon Justice Michael Kirby AC CMG “Constitutional Interpretation and Original Intent: A Form of Ancestor Worship?” (2000) 24 Melbourne University Law Review 1

Quotes of fewer than three lines appear in the body of the text in single quotation marks. If your quote contains a quote within it, the quote within the quote is denoted by using double quotation marks.

Examples

This was adopted in the joint judgment of Gummow, Hayne and Crennan JJ in *Forge v ASIC* where it was said that ‘Chapter III [of the Constitution] requires that there be a body fitting the description “the Supreme Court of a State”, and ‘that it is beyond the legislative power of a State so to alter the constitution or character of its Supreme Court that it ceases to meet the constitutional description’. Earlier, in *Fardon v Attorney-General (Qld)* Gummow J observed that the ‘institutional integrity of the state courts ... bespeaks their constitutionally mandated position in the Australian legal system’. His Honour was there referring to the Commonwealth Constitution. ...⁷

Under s 74MA of the *Real Property Act 1900* (NSW) a registered proprietor can seek to have a caveat withdrawn immediately, rather than simply issue a lapsing notice. On such an application ‘it is well established that the caveator bears the onus of sustaining the caveat’ and the test is similar to that involved in the grant of an interlocutory injunction.⁸

If a quote is longer than three lines long, it should be:

- in a new paragraph, indented from the left margin
- in a smaller font
- have **no** quotation marks surrounding it.

If your quote contains quotes within it, surround the quote within with single quotation marks.

Examples:

Impartiality is an essential characteristic of courts. As was said in *Forge v Australian Securities and Investments Commission*:

⁷ The Hon Justice J Gilmour ‘*Kirk: Newton’s apple fell*’ (2011) 34 Australian Bar Review 155, 167

⁸ Lee Aitken ‘Current issues with caveats: A pan-Australian conspectus’ (2010) 84 Australian Law Journal 22, 24

An important element ... in the institutional characteristics of courts in Australia is their capacity to administer the common law system of adversarial trial. Essential to that system is the conduct of trial by an independent and impartial tribunal. ...⁹


The party bringing the charge bears the onus of proof, and all contempts, whether or not classified as criminal, must be proved according to the ordinary criminal standard of proof beyond reasonable doubt. Therefore, as Gibbs, Stephen and Mason JJ in their joint judgment in *Barca v R* (1975) 133 CLR 82 (at 104) stated:

When the case against an accused person rests substantially upon circumstantial evidence the jury cannot return a verdict of guilty unless the circumstances are 'such as to be inconsistent with any reasonable hypothesis other than the guilt of the accused': *Peacock v The King*. To enable a jury to be satisfied beyond reasonable doubt of the guilt of the accused it is necessary not only that his guilt should be a rational inference but that it should be 'the only rational inference that the circumstances would enable them to draw': *Plomp v The Queen*; see also *Thomas v The Queen*. ...¹⁰

Ellipses

 See AGLC, r 1.5.7

An ellipsis within a quote is a series of three full stops ('...') which denotes that some words from the quote have been omitted. It is useful to omit words from quotes where they are not to the point or would interrupt the flow of your text.

 Example:

Secondly, the essential notion is that of repugnancy to or incompatibility with that institutional integrity of the State courts which bespeaks their constitutionally mandated position in the Australian legal system.¹¹

Becomes, in the following quote:

Earlier, in *Fardon v Attorney-General (Qld)* Gummow J observed that the 'institutional integrity of the state courts ... bespeaks their constitutionally mandated position in the Australian legal system'. His Honour was there referring to the Commonwealth Constitution.

⁹ *British American Tobacco Australia Services Limited v Laurie* [2011] HCA 2 (9 February 2011), [32] (French CJ), citing *Forge v Australian Securities and Investments Commission* (2006) 228 CLR 45, 76 [64] (Gummow, Hayne and Crennan JJ)

¹⁰ *Ali v Collection Point Pty Ltd* [2011] FCAFC 87 (15 July 2011), [41] (Rares, Foster and Dodds-Streeton JJ)

¹¹ *Fardon v Attorney-General (Qld)* (2004) 223 CLR 575, [101] (Gummow J)

Citation

Legal writing has quite distinctive conventions that you should adopt in all of your written work. In particular, you must know how to correctly cite primary authorities (statutes and cases). The standard against which you will be assessed when it comes to this is the [Australian Guide to Legal Citation \(3rd ed\) \('AGLC'\)](#).

The AGLC deals comprehensively with legal citation as well as citing secondary resources such as books, journal articles and online resources. The following, therefore, is a brief overview of the areas that may need clarification, and includes directions to the most relevant part of the AGLC for more detail.

Footnotes

 [See AGLC, r 1.1](#)

In law, generally footnotes are used and not endnotes or in text referencing (also known as the 'Harvard system'). For the purpose of your assessment, you must footnote your work.

When to footnote

 [See AGLC, r 1.1.1](#)

The AGLC, r 1.1.1 very succinctly sets out when you should footnote:

Footnotes should be used to:

- provide authority for a proposition;
- acknowledge a source that is relevant to an argument and indicate how it is relevant;
- provide information that enables the retrieval of relevant sources and quotations that appear in the text; and
- provide other (often tangential or extraneous) information that is not appropriate to include in the text.

How to footnote

 See AGLC, rr 1.1, 1.4

This table summarises:

- How to cite a source for the first time;
- How to cite a repeat citation of a source.

Source	Action	How to footnote
Any	Citing in the footnotes for the first time.	Cite in full.
Any	Citing in the footnotes where the immediately prior footnote is the only and exact same source cited.	Write 'Ibid' if the pinpoint reference is the same. Add the pinpoint reference after the 'Ibid' if it is different. ¹²
<ul style="list-style-type: none"> • Books; • Journal articles; • Other secondary sources.¹³ 	Citing in the footnotes where the source has already been cited, but is not: <ul style="list-style-type: none"> • the only and exact same source cited in the immediately prior footnote; or • one of multiple sources cited in the immediately prior footnote. 	Write: '[Author's surname], above n X, [pinpoint reference]' Where 'X' is the footnote number where the source was first cited.
<ul style="list-style-type: none"> • Cases; • Legislation; • Other primary sources.¹⁴ 	Citing in the footnotes where the source has already been cited, but is not: <ul style="list-style-type: none"> • the only and exact same source cited in the immediately prior footnote; or • one of multiple sources cited in the immediately prior footnote. 	<ul style="list-style-type: none"> • Cite the source in full and give the pinpoint reference; or • Cite the source using its 'short title' and give the pinpoint reference. (See Short titles/abbreviating names on page 32)

¹² A 'pinpoint reference' is the exact page or paragraph number to which you are referring in your citation. See further in this guide under the relevant section on citing a particular source on how to properly pinpoint reference.

¹³ See AGLC, r 6.16

¹⁴ See AGLC, r 1.4.2

Examples

The following table demonstrates how a series of footnotes might look and includes examples of repeat citations. Three sources have been cited and each is highlighted in a different colour to show how each is first cited, then cited later depending upon where the later citations are in relation to the first.

1.	<i>Waltons Stores (Interstate) Ltd v Maher</i> (1988) 164 CLR 387, 406 (Mason CJ and Wilson J) ('Walton Stores')
2.	<i>Ibid</i> , 407
3.	<i>Austotel Pty Ltd v Franklins Self Serve Pty Ltd</i> (1989) 16 NSWLR 582, 585 (Kirby P) ('Austotel v Franklins')
4.	<i>Ibid</i>
5.	<i>Walton Stores</i> (1988) 164 CLR 387, 428 (Brennan J)
6.	<i>K R Handley Estoppel by Conduct and Election</i> (Sweet and Maxwell, 2006) 25
7.	<i>Austotel v Franklins</i> (1989) 16 NSWLR 582, 586 (Kirby P)
8.	<i>Handley</i> , above n 6, 27

Short titles/abbreviating names

See AGLC r 1.4.3

A short title is an abbreviated title you may give to certain primary sources you cite multiple times your writing. Using short titles saves you having to type out citations of primary sources in full each time you cite them. The AGLC provides that short titles may be used for the following primary sources:

- cases and international judicial decisions
- legislation
- treaties
- other materials.¹⁵

A short title is designated by following the first citation – which is always given in full – with round brackets and your designated short title in single inverted commas in those brackets (see examples below). Your first full citation could be in the body of your writing or as a footnote.

Examples

Commercial Bank of Australia Ltd v Amadio (1983) 151 CLR 447 ('Amadio')

¹⁵ See AGLC, r 1.4.3

Australian Securities and Investments Commission v Somerville (2009) 77 NSWLR 110
(‘ASIC v Somerville’)

Trade Practices Act 1974 (Cth) (‘TPA’)

You may designate your own short title. Short titles can be used in the body of your writing as well as in your footnotes.

Other uses of short titles

Short titles can also be applied to individuals organisations with long names, where you will be referring to those individuals or organisations many times in your writing. Using short titles in this regard is not a citation issue, but it is worth mentioning.

Examples:

Australian Securities and Investments Commission (‘ASIC’)

Australian Competition and Consumer Commission (‘ACCC’)

The Minister for Immigration and Citizenship (‘the Minister’)

! NOTE:

It is not appropriate to abbreviate or give short titles to legal concepts as a way to save words. You must not abbreviate a concept like ‘misleading or deceptive conduct’ to ‘mdc’ or ‘promissory estoppel’ to ‘pe’.

Cases

See AGLC, r 2

The following tables are adapted from the AGLC. The first table shows how a reported case is cited. The second shows how unreported cases are cited.

! Note: *only the case name is italicised.*

Reported cases						
Examples	<i>R v Tang</i>	(2008)	237	CLR	1	, 7
	<i>Bakker v Stewart</i>	[1980]		VR	17	, 22
	<i>Rowe v McCartney</i>	[1976]	2	NSWR	72	, 75
Element	Case name	Year	Law report volume	Law Report name	First page of judgment	Pinpoint reference
AGLC Reference	Rule 2.1	Rule 2.2	Rule 2.2	Rule 2.3	Rule 2.4	Rule 2.5

Unreported / Medium Neutral Cases						
Examples	<i>Associated Alloys Pty Limited v ACN 001 452 106 Pty Limited</i>	[2000]	HCA	25	(11 May 2000)	[7]
	<i>R v Ozbec</i>	[2008]	VSCA	9	(31 January 2008)	[15]
	<i>Larsen v Linch</i>	[2006]	FCA	385	(7 April 2006)	[20]
	<i>Francis v CPI Graphics Ltd</i>	[2011]	NSWSC	317	(5 April 2011)	[6]
Element	Case name	Year	Court	Judgment number	Judgment date	Pinpoint ref.
AGLC Reference	Rule 2.1	Rule 2.2	Rule 2.3	Rule 2.4		Rule 2.5

Citing cases in the body of your writing

The examples of case citations provided above demonstrate how to cite a case name in full. In your writing, however, you do not need to cite the full case name in the body of your text. Rather, you can cite the name – and *just* the name – and then footnote the rest of the citation.

Example

Rather than write:

In In re Bank of Credit and Commerce International SA (No 8) [1998] AC 214, 226, Lord Hoffmann, with whose speech the other Law Lords agreed, gave a description of an equitable charge in which he emphasised that the proprietary interest created thereby is held by way of security, so that the chargee may resort to the charged asset only for the purpose of satisfying some liability due to the chargee.

You can write:

In In re Bank of Credit and Commerce International SA (No 8)¹⁶, Lord Hoffmann, with whose speech the other Law Lords agreed, gave a description of an equitable charge in which he emphasised that the proprietary interest created thereby is held by way of security, so that the chargee may resort to the charged asset only for the purpose of satisfying some liability due to the chargee.

The advantages of citing like this is that it:

- reduces clutter in your writing
- it saves you precious words contributing towards your word count.

However, it is not essential to cite like this. The important point is to be consistent!

Which case to cite?

 See AGLC, r 2.3

You will often find that a particular case is published in several law reports. That case might have a:

- citation in an authorised law report
- citation in an unauthorised generalist law report
- citation in an unauthorised specialist law report
- medium neutral citation.

The following table shows the difference between the different types of reports with the appropriate citation:

¹⁶ [1998] AC 214, 226

Type	Content	Common examples	When cited
Authorised law report	An authorised report series is a publication that has been recognised by a particular court as reporting the preferred and authorised decisions made by it. Often the cases that are reported in these reports have been carefully scrutinised by a law reporting council whose function is to identify cases of note to be reported.	Commonwealth Law Reports (CLR) Federal Court Reports (FCR) New South Wales Law Reports (NSWLR)	If a case has been reported in an authorised law report, use this citation in place of all others.
Unauthorised generalist law report	An unauthorised generalist report series is general in scope and does not necessarily limit itself to reporting cases from a particular court or jurisdiction. Nor is it recognised by a particular court as reporting its authorised cases. These reports tend to publish cases faster than the authorised law reports, so important cases often are made available in an unauthorised series before it is published in an authorised series.	Australian Law Reports (ALR) Federal Law Reports (FLR)	If a case has been reported in a generalist law report, but not (yet) in an authorised law report, use this citation in place of all others.
Unauthorised specialist law report	An unauthorised specialist report series is more specialised than an unauthorised generalist report series and similarly does not limit itself to reporting cases from a particular court or jurisdiction. It tends to focus on cases of a particular area of the law. For example: criminal law, administrative law, trade practices, etc. Sometimes, the cases reported will not be the entire judgment, but just extracts of key paragraphs.	Australian Corporation and Securities Reports (ACSR) Australian Criminal Reports (A Crim R) Administrative Law Decisions (ALD) Family Law Reports (FLR) Industrial Reports (IR)	If a case has been reported in a specialist law report, but not (yet) in an authorised law report or an unauthorised generalist report, use this citation in place of all others.
Unreported / Medium neutral citation	A lot of case law is now reported directly online by the courts. Because of this, every case reported since the late 1990s have been designated a medium neutral citation.	See table under 'Cases' above.	Only use medium neutral citations when the case has not been reported at all.

Parallel citations

 **See AGLC, r 2.9**

Given that a case can be reported in several places, it is not uncommon to see in judgments that it has been cited in all the reports in which the case has been reported. This is known as a ‘parallel citation’.

 **Example:**

... Leaving aside the difficulty of the absence of a relevant finding of mistake, the fact that such a vitiating factor exists may be necessary, but is not sufficient, for the making out of a claim for restitution. It is the injustice of the retention that founds the claim: *Ford (by his tutor Watkinson) v Perpetual Trustees Victoria Ltd* [2009] NSWCA 186; 75 NSWLR 42 at 69 [121] and 73 [134]; *Perpetual Trustees Australia Ltd v Heperu Pty Ltd* [2009] NSWCA 84; 76 NSWLR 195 at 221-222 [127]- [128] and 229 [161]; and *Heperu Pty Ltd v Belle* [2009] NSWCA 252; 76 NSWLR 230 at 264-265 [145]- [151], 269 [179] and 270 [180].

The above quote cites three cases, each of which has cited the authorised law report and the medium neutral citation. You do not need to do this. The AGLC states that parallel citations are not to be used. Rather, applying the table above, the above quote would look like this:

... Leaving aside the difficulty of the absence of a relevant finding of mistake, the fact that such a vitiating factor exists may be necessary, but is not sufficient, for the making out of a claim for restitution. It is the injustice of the retention that founds the claim: *Ford (by his tutor Watkinson) v Perpetual Trustees Victoria Ltd* (2009) 75 NSWLR 42, 69; *Perpetual Trustees Australia Ltd v Heperu Pty Ltd* (2009) 76 NSWLR 195, 221-222 and 229; and *Heperu Pty Ltd v Belle* (2009) 76 NSWLR 230, 264-265, 269 and 270.

Pinpoint referencing

 **See: AGLC, r 2.5**

A pinpoint reference follows a case citation and directs the reader to the exact page(s) or paragraph(s) in a judgment. For example, you would use a pinpoint reference to indicate the page/paragraph number of:

- a quote, or
- the ratio of a case.

The AGLC requires that pinpoint references must be done as follows:

Case type	Rule	Examples
Reported but without paragraph numbering (Older cases)	<p>A comma follows the case citation and the page number must be provided.</p> <p>A series of sequential pages can be shown by a dash in between the first page of the sequence and the last.</p> <p>A reference to multiple pages, not necessarily sequential order, is shown by using a comma in between references.</p>	<p><i>Heperu Pty Ltd v Belle</i> (2009) 76 NSWLR 230, 269</p> <p><i>Heperu Pty Ltd v Belle</i> (2009) 76 NSWLR 230, 269-270</p> <p><i>Heperu Pty Ltd v Belle</i> (2009) 76 NSWLR 230, 269-270, 289</p>
Reported with paragraph numbering (Modern cases)	<p>A comma follows the case citation and the page number must be provided.</p> <p>It is optional to include the paragraph reference in square brackets following the page number. Note that, again, a comma is used to separate pinpoint references on different pages.</p>	<p><i>Heperu Pty Ltd v Belle</i> (2009) 76 NSWLR 230, 269</p> <p><i>Heperu Pty Ltd v Belle</i> (2009) 76 NSWLR 230, 269 [179]</p> <p><i>Heperu Pty Ltd v Belle</i> (2009) 76 NSWLR 230, 264-265 [145]- [151], 270 [180]</p>
Unreported cases	<p>A comma follows the case citation and the paragraph number must be provided in square brackets.</p> <p>A series of sequential paragraphs can be shown by a dash in between the first page of the sequence and the last.</p> <p>A reference to multiple paragraphs, not necessarily sequential order, is shown by using a comma in between references.</p>	<p><i>Heperu Pty Ltd v Belle</i> [2009] NSWCA 252, [179]</p> <p><i>Heperu Pty Ltd v Belle</i> [2009] NSWCA 252, [145]-[151]</p> <p><i>Heperu Pty Ltd v Belle</i> [2009] NSWCA 252, [145]-[151], [179]</p>

For completeness, if you pinpoint reference in a case you should also refer to the judicial officer in whose judgment you have provided the pinpoint reference. Their name(s) is/are shown in round brackets following the pinpoint reference.

Examples

R v Wilhelm (2010) 77 NSWLR 1, 5 [24] (Howie J)

PT Garuda Indonesia Ltd and Another v Australian Competition and Consumer Commission (2011) 192 FCR 393, 398 [11] (Lander and Greenwood JJ)

Decisions of tribunals and other ‘court-like’ bodies

See AGLC, r 2.11

Today there is a wide range of other tribunals and courts. Like judgments, those decisions are readily made available on line and adopt the same – or very similar – medium neutral citations. So the rules set out above will generally apply.

! *Note the following:*

- You need to know the appropriate titles of the tribunal members or equivalent. See AGLC, r 2.11.1.

There are sometimes slight differences in the citation. See AGLC, r 2.11.1 for more details.

Statutes and delegated legislation

See AGCL, r 3.1

Statutes are a very important source of law, so it is imperative that you know how to cite them properly. Delegated legislation is also very important as it often contains the administrative details of particular statutes.

The following tables are adapted from the AGLC and provide examples and a breakdown of correct legislation citation.

Statutes				
Examples	<i>Corporations Act</i>	<i>2001</i>	(Cth)	, s 100
	<i>Crimes Act</i>	<i>1900</i>	(NSW)	, s 51
	<i>Transfer of Land Act</i>	<i>1893</i>	(WA)	, ss 1 – 4A
	<i>Competition and Consumer Act</i>	<i>2010</i>	(Cth)	, Pt 2
	<i>Restraints of Trade Act</i>	<i>1976</i>	(NSW)	, s 4(3)
	<i>Acts Interpretation Act</i>	<i>1954</i>	(Qld)	, s 20(2)(a)–(e)
Element	Statute title	Year enacted	Jurisdiction	Pinpoint reference
AGLC ref	Rule 3.1.1	Rule 3.1.2	Rule 3.1.3	Rule 3.1.4 – 3.1.5


Delegated Legislation				
Examples	<i>National Gallery Regulations</i>	<i>1982</i>	(Cth)	, reg 3
	<i>Federal Court Rules</i>	<i>1979</i>	(Cth)	, O 3
	<i>Uniform Civil Procedure Rules</i>	<i>2005</i>	(NSW)	, r 3.4
Element	Delegate legislation title	Year enacted	Jurisdiction	Pinpoint reference
AGLC ref	Rule 3.3			

Essentially, there is no difference in form when citing statutes or delegated legislation.

! *Note:*

- When citing statutes or delegated legislation, only the title and year is italicised, NOT the jurisdiction.

Pinpoint referencing

 See AGCL, rr 3.1.4 – 3.1.5 (Statutes), 3.3.2 (delegated legislation)

A pinpoint reference follows a statute citation and directs the reader to the exact section(s) or subsection(s) in a statute. It is **always** better to provide a pinpoint reference where possible rather than refer generally to an entire statute.

The following (slightly modified) table taken from the AGLC, 3.1.4, indicates what abbreviations to use when pinpoint referencing parts of a statute.

Units of a statute			
Designation	Abbreviation	Plural designation	Abbreviation
section	s	sections	ss
sub-section	sub-s	sub-sections	sub-ss
appendix	app	appendices	apps
article	art	articles	arts
chapter	ch	chapters	chs
clause	cl	clauses	cls
division	div	divisions	divs
paragraph	para	paragraphs	paras
part	pt	parts	parts
schedule	sch	schedules	schs
sub-clause	sub-cl	sub-clauses	sub-cls
sub-division	sub-div	sub-divisions	sub-divs

sub-paragraph	sub-para	sub-paragraphs	sub-paras
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The following (slightly modified) table taken from the AGLC, r 3.3.2, indicates what abbreviations to use when pinpoint referencing parts of delegated legislation. Unlike statutes, which are uniformly made up of ‘sections’ and ‘sub-sections’, the building block of delegated legislation vary between instruments.

Units of delegated legislation			
Designation	Abbreviation	Plural designation	Abbreviation
order	o	orders	oo
regulation	reg	regulations	regs
sub-regulation	sub-reg	sub-regulations	sub-regs
rule	r	rules	rr
sub-rule	sub-r	sub-rules	sub-rr

The level of a statute or delegated legislations to which you cite – ie, from whole chapters to parts to divisions to sections to sub-sections – depends upon how precise you need to be. Sometimes you need only indicate a part of a statute, in other cases you need to identify the specific sub section. Following are examples of how to cite down to sub-section level.

Example	Citation
Schedule 2 of the <i>Competition and Consumer Act 2010</i> (Cth)	<i>Competition and Consumer Act 2010</i> (Cth), sch 2
Section 10 of the <i>Competition and Consumer Act 2010</i> (Cth)	<i>Competition and Consumer Act 2010</i> (Cth), s 10

Sections 10 to 13 of the <i>Competition and Consumer Act 2010</i> (Cth)	<i>Competition and Consumer Act 2010</i> (Cth), ss 10–13
Sections 10, 14 and 17 of the <i>Competition and Consumer Act 2010</i> (Cth)	<i>Competition and Consumer Act 2010</i> (Cth), ss 10, 14, 17
Sub-section 1 of section 10 of the <i>Competition and Consumer Act 2010</i> (Cth)	<i>Competition and Consumer Act 2010</i> (Cth), s 10(1)
Sub-sections 1 to 3 of section 10 of the <i>Competition and Consumer Act 2010</i> (Cth)	<i>Competition and Consumer Act 2010</i> (Cth), s 10(1)-(3)
Sub-sections 1, 1B and 3 of section 10 of the <i>Competition and Consumer Act 2010</i> (Cth)	<i>Competition and Consumer Act 2010</i> (Cth), s 10(1), (1B), (3)

! *Note:*

- There is a space between the ‘s’ and the section number, but **no space** between the section number and the first sub-section number.
- Sub-sections are always denoted by round brackets.
- Even though some examples cite sub-sections of sections, the citation shows the higher of these.
- Please refer to AGLC, 3.1.5 for a more comprehensive list of multiple pinpoint referencing for statutes and AGLC, 3.3.2 for delegated legislation. Although all of the above examples deal with citing a statute, the same principles apply to citing delegated legislation.

Quasi-legislative materials

 See AGLC, r 3.4

The AGLC provide guidance on how to properly cite the following materials.

Resource	AGLC reference
Bills	Rule 3.4.5
Explanatory memoranda, statements and notes	Rule 3.4.6
Gazettes	Rule 3.4.1

Orders and rulings of government instrumentalities and officers (ASIC class orders, taxation rulings, etc)	Rule 3.4.2
Legislation delegated to non-government entities (ASX listing rules, professional conduct rules, etc)	Rule 3.4.3
Court practice directions and practice notes	Rule 3.4.4

The Australian Constitution(s)

 See AGLC, r 3.2

The *Australian Constitution* may be cited as follows:

- *Australian Constitution*
- *Commonwealth Constitution*
- *Commonwealth of Australia Constitution Act 1900* (Imp) 63 & 64 Vict, c 4, s 9

The constitutions of the states are cited like ordinary statutes.

Pinpoint referencing when citing a constitution is the same as ordinary statutes.

Secondary resources

 See AGLC, Pt III

You will also have to cite secondary resources in your writing, particularly if you are given a research essay. The most common secondary resources you will have to cite are books and journal articles.

Once again, the AGLC provides comprehensive guidance to citing all forms of secondary material and you must refer to it to find out more. This guide will provide a brief overview of the above two resources.

Books

 See AGLC, r 5

The following table is adapted from the AGLC and provides examples of how to cite books.

Examples	Peter Butt	<i>Land Law</i>	(Thomson Reuters, 6 th ed, 2010)	[12 54]
	Jeannie Paterson, Andrew Robertson and Peter Heffey	<i>Principles of Contract Law</i>	(Lawbook Co, 2 nd ed, 2005)	[17.55]
	Clare Ovey and Robin C A White	<i>Jacobs & White: The European Convention on Human Rights</i>	(Oxford University Press, 4 th ed, 2004)	167
	Francis D Rose (ed)	<i>Consensus ad idem: essays in the law of contract in honour of Guenter Treitel</i>	(Maxwell & Sweet, 1996)	100
	S A Christensen et al	<i>Land Contracts in Queensland</i>	(Federation Press, 3 rd ed, 2011)	51
Element	Author	Title	Publication details	Pinpoint reference
AGLC ref	Rule 5.1	Rule 5.2	Rule 5.3	Rule 5.4

! *Note:*

- The authors' names are written out in full in the citation.
- Where there are up to three authors, the names of the last and second-last authors are separated by the word 'and'.
- Where there are more than three authors, just the surname of the first listed author is cited followed by 'et al'.
- If a book is edited by a single person use '(ed)' to denote the editor, or '(eds)' if there are multiple editors.
- The title of the book is written in italics and should copy exactly the title of the book: use the same capitalisation, punctuation and italicisation.

Pinpoint referencing

A pinpoint reference is placed after a citation and directs the reader to the exact page(s) or paragraph(s) in a book. For example, you would use a pinpoint reference to indicate the page/paragraph number of:

- a quote, or
- where a particular point is made by the author that you refer to in your text.

The AGLC requires that pinpoint references must be done as follows:

Rule	Examples
A space – no comma – follows the book citation and the page number must be provided.	Frederick Pollock and Robert S Wright <i>Possession in the Common Law</i> (Law Press, 1990) 99
A series of sequential pages can be shown by a dash in between the first page of the sequence and the last.	Frederick Pollock and Robert S Wright <i>Possession in the Common Law</i> (Law Press, 1990) 99-104
A reference to multiple pages, not necessarily sequential order, is shown by using a comma in between references.	Frederick Pollock and Robert S Wright <i>Possession in the Common Law</i> (Law Press, 1990) 90, 92-96, 99-104
If the book contains paragraph numbering as well as page numbering, a pinpoint reference can be made by a space – no comma – following the book citation and the paragraph number in square brackets.	Peter Butt <i>Land Law</i> (Lawbook, 2010) [15 37]
A series of sequential pages can be shown by a dash in between the first paragraph of the sequence and the last.	Peter Butt <i>Land Law</i> (Lawbook, 2010) [15 37]-[15 39]
A reference to multiple paragraphs, not necessarily sequential order, is shown by using a comma in between references.	Peter Butt <i>Land Law</i> (Lawbook, 2010) [15 37]-[15 39], [15 41], [19 01]-[19-02]
You may also pinpoint both the page <i>and</i> paragraph number if the is possible.	Peter Butt <i>Land Law</i> (Lawbook, 2010) 301 [15 40]

Chapters in books

 **See: AGLC, r 5.5**

Chapters in books that contain contributions from many authors are cited the same way as books, but with additional information at the beginning of the citation that identifies the author of the chapter.

Examples

- Claire-Lise Buis 'France' in Markus Thiel (ed), *The 'Militant Democracy' Principle in Modern Democracy* (Ashgate, 2009) 75
- Cheryl Saunders 'Beyond Minimalism' in Sarah Murray (ed), *Constitutional Perspectives on an Australian Republic: Essays in Honour of Professor George Winterton* (Federation Press, 2010) 54

! *Note:*

- The authors' names are written out in full in the citation.
- Where there are up to three authors, the names of the last and second-last authors are separated by the word 'and'.
- Where there are more than three authors, just the surname of the first listed author is cited followed by 'et al'.
- The title of the chapter is *not* italicised, but appears in single inverted commas. The title should be written exactly as it appears published: use the same capitalisation, punctuation and italicisation.

Pinpoint referencing

Pinpoint referencing chapters in books is the same as pinpoint referencing books generally. See Pinpoint referencing for books on page 46 above.

Journal articles

 See AGLC, r 4

The following table is adapted from the AGLC and provides examples of how to cite journal articles.

Examples	D A Ipp	'Judicial impartiality and judicial neutrality: Is there a difference?'	(2000)	19	<i>Australian Bar Review</i>	212	, 215
	Keith Mason	'Ethics and the Environment'	(2011)	10	<i>The Judicial Review</i>	187	, 188
	Jessica Palmer	'Chasing a Will-o'-the-Wisp? Making sense of Bad Faith and Wrongdoers in Change of Position	[2005]		<i>Restitution Law Review</i>	250	, 252
	Jeremy Masters	'Easing the Parting'	(2008)	82(11)	<i>Law Institute Journal</i>	68	69-71
Element	Author	Title	Year	Volume and issue no	Journal name	First page	Pinpoint ref
AGLC ref	Rule 4.1	Rule 4.2	Rule 4.3	Rule 4.4	Rule 4.5	Rule 4.6	Rule 4.7

! *Note:*

- The authors' names are written out in full in the citation.
- Where there are up to three authors, the names of the last and second-last authors are separated by the word 'and'.
- Where there are more than three authors, just the surname of the first listed author is cited followed by 'et al'.
- The title of the article is *not* italicised, but appears in single inverted commas. The title should be written exactly as it appears published: use the same capitalisation, punctuation and italicisation.
- The journal title should be written in full and not abbreviated. 'The' should not be used at the start of the title.

- For journals organised by volume, the year should appear in round brackets ‘(...)’. For journals organised by year, the year should appear in square brackets ‘[...]’.

Volume and issue number

 See: AGLC, r 4.4

A given volume of a journal, or a journal published by year, will consist of several issues. It is not necessary to include the issue number, where the pagination of the first issue is continued from the first issue to the last. That is, where the first page of the second issue is numbered as the one following the last page of the first issue, the first page of the third issue is the one following from the last page of the second issue, and so on.

Conversely, where the pagination of each issue commences at page one for each issue, it will be necessary to include the issue number in the citation. The issue number is shown as a number in round brackets following the:

- volume number (if the journal is published by number), or
- year number (if the journal is published by year).

Pinpoint referencing

A pinpoint reference is placed after a citation and directs the reader to the exact page(s) or paragraph(s) in a journal. For example, you would use a pinpoint reference to indicate the page/paragraph number of:

- a quote, or
- where a particular point is made by the author that you refer to in your text.

The AGLC requires that pinpoint references must be done as follows:

Rule	Examples
------	----------

Rule	Examples
A comma follows the journal citation and the page number must be provided.	Brian Coote 'Variations Sans Consideration' (2011) 27 Journal of Contract Law 185, 186
A series of sequential pages can be shown by a dash in between the first page of the sequence and the last.	Brian Coote 'Variations Sans Consideration' (2011) 27 Journal of Contract Law 185, 186-288
A reference to multiple pages, not necessarily sequential order, is shown by using a comma in between references.	Brian Coote 'Variations Sans Consideration' (2011) 27 Journal of Contract Law 185, 185, 187-189

Internet resources

See AGLC, r 6.15

The internet is a very rich source of secondary materials. However, you must carefully evaluate the credibility, reliability and authorship of any material you use. Scholarly articles usually include information about the background of the author. Peer reviewed journal articles are generally reliable and your lecturer will often refer you to these sources.

Wikipedia is not considered to be a source of information to be relied upon as a key reference.

Bibliographies

See AGLC, r 1.16

For general rules on writing bibliographies see the AGLC rule 1.16 pages 33-35.

Reviewing and editing

Your first draft will never be good enough. Valuable marks can be gained by leaving enough time to reflect on your writing and review it for errors and inconsistencies.

When reviewing your work check for:

- content, coherence, cohesion – does it hold together logically?;
- common grammar errors that reduce clarity of expression
- typographical errors (See also: 'Spelling' (page 57)).

*** TIPS ***

Guide to Written Communication-version 1, 2014

- If there is time to leave the draft for a day or more, a rereading with refreshed eyes will usually reveal errors.
- Consider also giving your writing to a friend or family member to read. Even if they are not lawyers and cannot comment on your legal analysis, they will be able to pick up on typographical errors you have missed or comment on the clarity of your expression.
- Finishing a first draft with days to spare will also allow time to reflection. It is common to suddenly realise a few days after you have written something that something may have been overlooked or that the argument is logically inconsistent.

Word Limits

Word limits must be observed, and students must not deviate from the word limit by more than ten per cent. Penalties for deviation may be stipulated in subject outlines and the faculty's subject information book. The suggested word length will help you to remain focussed on the real issues in your writing and observe the limitation. The legal profession is increasingly required to write submissions and court documents to a word limit. Clients expect concise and relevant advice. It is essential in practice to address the crucial issues in a clear, succinct manner.

Footnotes, bibliographies and endnotes are not usually included in the word count.

Grammar

Students are presumed to know the rules of:

- grammar (the conventions governing the use of words);
- syntax (the correct order of words);
- semantics (the meaning of words);
- punctuation (the division of written or printed matter into sentences, clauses, by means of points or stops).

Use of the passive

The passive voice is used when the doer of an action or the subject of a sentence is not the focus of the sentence. It is often used in legal writing to make writing seem more 'official' or 'formal'. Indeed, judgments often make use of the passive voice.

However, over use of the passive voice can create a leaden forced tone. It does not necessarily make the text sound more formal. You should try to mix the active voice and the first person ('I') with the passive voice. Use the passive when you do not want to stress the subject or agent or the doer of an action in a sentence.

It is acceptable to use the first person where appropriate, particularly in a piece of reflective writing. For more guidance on this, see the next section.

Examples:

Passive voice	Active voice
The bank was robbed at 2.30 on Friday afternoon.	Neddy White robbed the bank at 2.30 on Friday afternoon.
The accused was fined \$1 000 by the judge.	The judge fined the accused \$1 000.
It may be argued that Brown should have known of the extenuating circumstances.	I will argue that Brown should have known of the extenuating circumstances.
It must be established whether the employer knew, or ought to have known of this special disability and therefore exploited it by assenting to the written authority.	I will establish whether the employer knew, or ought to have known of this special disability and therefore exploited it by assenting to the written authority.

Use of first (I/me/us/we) and second (you) person

The writer's opinions can be expressed in different ways. The use of the first person ('I'/'we') is not common in academic writing, but can be used in the right context, such as reflective journals. However, as a general rule, you should avoid using the first person when expressing an opinion as it is given that your writing is an expression of your opinion. It is better to express arguments without a personal opinion, and to draw on the strength of the research and arguments considered in your essay.

Examples:

It would be inappropriate to write:

In light of these cases, I think the law is a mess.

However, it would be appropriate to write:

The cases considered in this article demonstrate that there is evident confusion as to the scope of the doctrine of [x]. This confusion requires clarification of the High Court. Alternatively, it might be expressed in this way: 'In the writer's view, these cases demonstrate uncertainty in the courts as to the scope of the doctrine of [x]'.

In Sample A below, the student repeats the first person, Sample B shows how to reduce the use of the first person and use more precise language.

Sample A

The concept of fusion fallacy has become so broad However to my mind the words of the learned Professor Tilbury seek progress for progress' sake Within my essay I will provide advocacy for what I believe is equity's Within such I will illustrate that I will end by turning to modern legal scholarship

Sample B

The concept of fusion fallacy has become so broad However, according to the arguments made by This essay argues that ... equity In addition, the argument will be supported with evidence from In conclusion through looking at modern legal scholarship it may be ... that

! *Note: Do not address the reader directly as 'you' or 'us' or 'our' because you cannot make assumptions about the reader's position.*

Punctuation

The following is a brief introduction to some of the more common problems relating to punctuation encountered in academic writing.

Full stops

Use full stops only at the end of sentences. Do not use full stops to indicate an abbreviation.

Examples

Type □	Do not type □
<i>Crimes Act 1900</i> (NSW), s 5	<i>Crimes Act 1900</i> (NSW), s. 5
<i>Barnes v Addy</i> (1874) LR 9 CH App 244	<i>Barnes v. Addy</i> (1874) LR 9 CH App 244
<i>Moy v Briscoe & Co Ltd</i> (1907) 5 CLR 56	<i>Moy v. Briscoe & Co. Ltd</i> (1907) 5 CLR 56
Mr Smith	Mr. Smith

Commas, colons and semi colons

Commas can be used to separate items in a list, to punctuate a sentence into more readable units and to connect clauses.

Example

The judge's decision was predicated on obtaining new evidence from the key witness; however, the witness was absent from court that day.

The greatest composers of all time are considered to be Bach, Mozart, Beethoven and Brahms.

Given that the journey would take five hours, Tom decided to finish the Tolstoy novel he started reading eight months ago.

Colons can be used to show that what follows are related examples or to introduce lists.

Example

Students have three main problems with writing: not answering the question, not developing an argument, and writing poor paragraphs.

Semi-colons can be used to separate longer entries that may contain commas.

Example

Southern cities and states have been affected by the ash; Adelaide, South Australia; Melbourne, Victoria; and Hobart, Tasmania.

Or semi-colons can be used to join two sentences that are thematically but not grammatically related.

Example

The barrister suggested a break in proceedings; immediately the court emptied.

Ampersands

The ampersand ('&') is used to denote the word 'and'. As a general rule you should **avoid** using it in place of the word 'and' in your writing, unless you are:

- quoting writing that uses the ampersand; or
- citing a title or heading of a text that uses the ampersand.

Apostrophes

Apostrophes are used to show either possession or contraction.

Possession

Using an apostrophe to denote possession means that you are showing that an object belongs to something or someone.

Examples


Example	Meaning
Harry's gun.	The gun belonging to Harry.
The defendant's cross-claim.	The cross-claim of the defendant

If a singular word ends in 's' there is no need to add another 's' to the end. However, it is not incorrect to do so.

Examples

Example	Meaning
Chris' red car.	The red car belonging to Chris.
Mr Jenkins's house.	The house belonging to Mr Jenkins.

If the subject is a plural and ends in 's', then you just add an apostrophe.

 Examples

Example	Meaning
The girls' change room.	The change room for girls.
The dogs' owner.	The dogs belonging to the owner.


! *NOTE: If the subject is in an irregular plural form that does not end in 's', then you need to add "s":*

 Examples:

Example	Meaning
The women's collective.	The collective for women.
The men's group.	The group for men.

Contraction

A contraction indicates that letters have been omitted from a word, producing a shorter version of it. The role of the apostrophe is to denote that there are letters missing.

 Examples

Example	Meaning	Example	Meaning
cannot	can't	would not	wouldn't
shall not	shan't	of the clock	o'clock
they are	they're	it it	it's

! *NOTE: Do not use contractions in your academic writing. Using contraction can give your writing an informal or colloquial tone, which is inappropriate.*

Spelling

Spelling correctly is essential. Repeatedly misspelling legal terms suggests to your audience (often your marker) that you have not paid attention to your study. It also suggests that you have not thoroughly prepared your work or given it the level of attention that it deserves. It is essential to check your work before final submission.

Common words and phrases, such as ‘negligence’ may bear specialised legal meanings, or be defined by statute or case law. You should also be certain of your spelling, and not rely upon computer-generated spell-checks which cannot distinguish when a word is correctly spelt, but is the wrong word (eg, ‘I have to hands’ for ‘I have two hands’).

Macquarie dictionary

The Macquarie Dictionary is the authoritative text on Australian English spelling.

It is available as an online resource accessible through the University’s Library website. Simply search for ‘Macquarie Dictionary’ in the catalogue.

There – they’re – their

Remember that although they sound the same there is a difference in meaning between ‘there’ (place), ‘they’re’ (they are) and ‘their’ (possessive).

There is used:

- to refer to a place
- as a pronoun and the subject of a sentence when conjugated with the verb ‘to be’
- as an adverb.

They’re is a contraction of ‘they are’. Only use ‘they’re’ when you would say ‘they are’.

Their is a possessive adjective that indicates that something belongs to ‘them’. Only use it to denote possession.

Its – it’s

There is a very simple difference between ‘it’s’ and ‘its’:

- its = possessive adjective
- it’s = contraction of ‘it is’

A simple rule when working out which one to use is to ask yourself whether ‘it’s’ can be expressed as ‘it is’ and if so does the sentence still make sense.

Examples

It's not fair. = It is not fair.

It's the best thing that has ever happened to me. = It is the best that that has ever happened to me.

It's written here, in its title. = It is written here in its title.

Spell checking

Use the spell check feature on your computer but be aware that it has limitations.

A particular problem with spell check is that it will not identify the use of a *wrong word*.

For example:

- bare v bear
- analysis v analyses
- their v there
- you're v your

You must check that you have used the correct form of the word you want to use and the correct spelling. This will require close proof-reading.

Beware! Autocorrect and legal terms

Another feature of word processor software that is related to the spell checker is the autocorrect function. Often the particular spelling of certain precise legal terms are not stored in the word processor's default dictionary. If that software also has an autocorrect function enabled, it may take your correctly spelled legal terms and automatically change its spelling to an ordinary English word with very similar spelling. Particular culprits in Microsoft Word are:

- parol → parole
- estoppel → estoppels

There are probably more, so beware! This is another reason to carefully read and edit your work before handing it in.

Additional resources on punctuation, grammar and style

For additional information about punctuation, spelling, grammar and style see:

- R W Burchfield, *Fowler's Modern English Usage* (Oxford University Press, 2005) (This is the AGLC-official guide)
- P Peters, *The Cambridge Guide to Australian English Usage* (Cambridge University Press, 2007).

Editing and Proof reading


It is important to edit and proof read writing. Always leave time to work on a draft. Generally, editing takes place on two levels. On one level it refers to checking the structure of the whole text to see that it flows from one idea to the next and that an argument is developing and that the conclusion is logical. On another level proof reading refers to checking spelling, punctuation and grammar.

Numbers, dates and currency

Numbers

 See AGLC, r 1.12.1

- Spell out numbers from one to nine.
- Numbers greater than 10 should be written as numerals.
- Where numbers have more than three figures, use a space to separate groups of three figures (not a comma). Numbers in the millions or higher may be expressed as 'millions' or 'billions', etc.
- Percentages are expressed as 'X per cent'.

 Examples:

There are eight sheep in the meadow.

The degustation menu was made up of 11 courses.

Approximately 250 000 people signed the petition.

The stereo had been reduced from \$1 225 to \$950.

BigCorp predicted losses in excess of \$1.5 million.

Happily only five per cent of students failed this semester.


! *Note:*

- Page, section, chapter numbers, etc, are always written as numbers, irrespective of whether they are from one to nine or greater.
- Never start a sentence with a numeral, unless that numeral is part of a proper noun.

Dates

 See AGLC, r 1.13

Dates should appear as follows: [Day] [Month] [Year]

 Examples:

1 January 1901 □

25 December 2011 □

Not:

1/1/1901 □

25th January 2011 □

Currency

 See AGLC, r 1.12.2

Monetary amounts, when it is clear that you are only ever referring to Australian dollars, should be shown as: \$1 000, \$4, \$32.65

Take care to ensure that you put the correct currency type before the amount.

Following are some examples:

Figure	Currency
--------	----------

AUD1 500 A\$1 500	Either form denotes Australian dollars where elsewhere in your writing you refer to other types of currency.
USD1 500 US\$1 500	Either form denotes American dollars.
£1 500 GBP1 500	Either form denotes British pounds sterling.
€1 500 EUR1 500	Either form denotes the Eurozone's euro.

Formatting

Your subject outlines will tell you exactly in what format your writing should be. Always ensure that you check formatting requirements for a particular assignment before handing it in. The following are some formatting tips that tend to be used for all legal writing and which exist to make reading easier.

* TIPS *

- Use one consistent font (Arial 11 or Times Roman 12).
- Headings may be underlined, in bold or upper case. But be consistent throughout the document.
- Line spacing should be 2 lines space for normal text; 1.5 line space for indented quotes.
- Do not underline typed text in the body of your paragraphs. Underlining (or alternatively, blue text) may only be used on html documents where the underlined text is hyperlinked to another webpage.
- The left margin should be approximately 3cm and right, top and bottom margins should be at least 2cm.

- Put your name and student number on the paper. Consider putting it on every page in a header or footer so that it is easily identified if a page becomes separated.
- Use page numbering.

What markers are looking for

Included here is a summary of feedback from various law assessment tasks:

- The most frequent negative comments from lecturers are that students do not answer the question or only give very broad answers.
- Students do not use correct citation (always consult the AGLC).
- Students include too many direct quotes in place of their own writing. Students should paraphrase or summarise ideas using their own words. This shows the lecturer that the student understands the issues they are writing about and can connect them to their own arguments.
- Essays lack a clear structure. Introductions should be clearly set out and show how and what will be addressed in the essay.
- Some students use a report style using bullet points and numbering. **Avoid this.**
- Students do not clearly and precisely address the relevant issues.

- **Higher marks** are usually given for having a clear thesis, developing a critical point of view, referencing correctly, providing a discursive commentary on the problem in the question, referring to or supporting the question statement and for addressing the assessment criteria.

Specific assignment types

Having looked at the general writing skills you will use in any exercise during your law degree, this next section will explore certain skills that are relevant to specific assignment types. In this section you will find out more on:

- writing research essays
- answering problem questions
- writing case notes
- writing in exams.

Research essays

As the name suggests, the gist of a research essay is the research. This will require reading widely, and synthesising and reconciling information from various sources.

Key words used in the question set by research essays include: 'critically analyse', 'evaluate', 'discuss' and 'argue'.

What are 'critical skills' in a research essay?

In research essays you are often asked to 'critically analyse ...' or to 'critically evaluate ...' an issue raised in a quote or a decision, but what does this mean?

The following is adapted from the Graduate Attributes Handbook 2010:

A critical thinker evaluates information by breaking it down and examining its component parts, or takes dispersed, disconnected ideas and information and synthesises them or creates something new from them.¹⁷

An analytical person appraises and assesses the value and significance of legal issues and viewpoints.¹⁸

A discussion involves looking at both sides of the question weighing up the evidence and coming to a conclusion. That means being able to identify:

¹⁷ Graduate Attributes 2010, 4

¹⁸ Ibid, 9

- what the writer is trying to argue
- how the writer is using evidence to construct and support the argument.

It also means that when you write you must:

- synthesise ideas from different sources
- identify where writers agree and disagree in their arguments and approaches to problems.

Critical writing is more than criticising ideas and it is more than a description or a narrative. Being critical means:

- analysing texts – breaking what you read down into components and considering how they all work together
- asking questions of what you read and write – do I agree/disagree? Why do I agree/disagree? Has the author overlooked or not adequately addressed something? Would taking a different perspective to the author vis-à-vis the subject matter lead to a different conclusion?
- exploring all the sides of an argument – considering the arguments for a certain position as well as against it. Evaluating the persuasiveness of those arguments.

Steps to writing a research essay

1. Plan your response (page 66)
2. Research the topic (page 67)
3. Make thorough notes (page 68)
4. Write the first draft (page 70)
5. Review and edit your work (page 70)

Plan your response

Lecturer feedback suggests that students do not answer every part of the question.

- First, **read the question** then highlight or number the various parts of the question. Consider:
 - What issues are you being asked to address?

- What are you being asked to do in response to those issues? Look at both the **content words** (in the quote or statement) and the **task verbs** ('discuss', 'critically analyse', 'evaluate').
- any issues of **definition** which arise from the terms of the question itself. Use a legal dictionary, even just to check your understanding of the terms.
- **the scope** of the question: does it ask you about Commonwealth law, State law, or both? Does it ask about the law as it has been, as it is, as it should be, or a mixture of these? Are you asked to focus on statute law, customary law, convention, or common law, or are all of these pertinent? Are you asked to consider not just the black letter law, but also the policy behind it?
- Draw a mind map of your first response to the question and the central issue or issues it raises.
- Try to see the connection between the issues that are raised.
- Ask yourself: does my response really answer the question?

Tips from lecturers

- make the most of all the information in the question
- minor grammar errors are not as much of a problem as not answering all parts of the question ie failure to answer the question asked
- think about structure – often marks are lost due to the lack of a suitable structure
- lack of critical thinking – merely regurgitating the law and the facts without any analysis will not earn you high marks.

Research the topic

- Begin with suggested reading and/or the relevant weeks reading for the topic.
- Start searching through peer reviewed journal articles to find relevant material and become familiar with the current thinking on your topic, build up a field of knowledge around the topic. Also, journal articles will most likely lead to you other sources to consider.

- Do not forget the Library! Although it is easy to forget that books are valuable resources in the age of the internet, they often contain valuable knowledge. Take the time to browse the shelves for books relevant to your essay.
- Do more research if you think there is a lack of evidence to support your argument. However, it is also important to know when to stop reading and start writing. Once you start writing, only then will you become aware of further gaps in your knowledge that will require further research.

Make thorough notes

Take careful note of important details, and especially of key citations from decided cases which can be used to support your contentions, or quotes by authors of journal articles or books. To properly cite material you must have the building blocks: author, title of source, date of publication, page/paragraph reference.

Books

Record:

- author's/editor's name and the author of any chapters within the book to which you refer
- title of book
- year of publication
- the edition of the book if it has seen more than one edition
- the page number(s) of whatever notes you take.

Journals

Record:

- author's name
- title of article
- title of journal
- year of volume
- volume number and issue (if relevant)
- page number of first page

- page number of any pages from which you record notes or quotes.

Cases

Record:

- the case name
- the law report title, year and first page of the report (if case is reported)
- the medium neutral citation (if the case is unreported)
- the court
- the paragraph(s) or page number(s) from which you record notes or quotes
- the identity of the judge(s).

Make your notes relevant

*** TIPS ***

- Keep in mind the subject of your essay.
- Do not write down everything; only extract the information which can help in your task. Scan a piece once, or even twice, before beginning to take notes and assess its value.
- Make notes of relevant opinions expressed, and of your preliminary thoughts on those points. Remember that you should develop your own arguments, and not simply adopt someone else's because it may not suit your specific topic.

Organising Notes

Once you have taken notes, or while you are completing this process, give some thought to the organization of those notes, so as to make your writing task easier.

*** TIPS ***

- Organise notes alphabetically by author name or case name.
- Use tabs to identify the most relevant pages.

Write the first draft

Refer back to your mind map and the initial thoughts you noted down before you started your research. Has your research changed your thoughts on these? Make any necessary changes to your plan. Otherwise, refer to 'Writing your first draft' on page 18 for more tips on writing your first draft.

See also:

- 'Structuring written work' (page 19)
- 'Headings and sub-headings' (page 19)
- 'Introduction' (page 20)
- 'Body' (page 21)
- 'Conclusion' (page 23)

and other useful tips on writing above in this Guide.

Review and edit your work

See 'Reviewing and editing' (page 50)

Problem Questions

Problem questions call for legal advice on the law as it applies to a given set of facts. Therefore to answer them, you must think carefully about the facts, and identify the legal issues arising from them. These questions, unlike research essays, are not so much concerned with policy issues, but black letter law. That is, by applying the law as it currently stands to the given set of facts, what would be the legal outcome? Hence, preparing to answer problem questions tends to focus on researching primary resources such as cases and legislation.

Objectivity

The point of a problem question is to ‘think like a lawyer’ by advising a person on the facts. This means that you must objectively and rationally assess the facts and apply the law to those facts in order to predict the legal outcome. It is **not** about always attempting to come to a ‘happy ending’ for your client and you are not expected to always come to such a conclusion. Sometimes, when you apply the law to the facts, there will be no relief in law for your client. Your role as a lawyer is to provide that advice. Do not needlessly strain facts to suit your idealised outcome.

Steps to writing an answer to a problem question

1. Plan your response (page 71)
2. Research the topic (page 72)
3. Make thorough notes (page 72)
4. Write the first draft (page 73)
5. Review and edit your work (page 79)

Plan your response

- First, **read the question** then highlight or number the various parts of the question. Consider:
 - What issues are you being asked to address? Or, what legal issues arise from the facts?

- **the scope** of the question: does it ask you about Commonwealth law, State law, or both? Are you asked to focus on statute law, customary law, convention, or common law, or are all of these pertinent?
- Master the facts, they are important! Draw diagrams of the relationships between the parties to clarify exactly what is going on in the question. Highlight or underline material facts.
- Identify the grey areas. Often problem questions are deliberately set to test your awareness of unsettled areas of the law, or to see how you apply clear law to facts that do not clearly point to a certain legal outcome.
- Draw a mind map of your first response to the question and the central issue or issues it raises.

Research the topic

Once you have isolated the issues in the task, you should then be able to direct your reading. Remember that your job as a lawyer is to identify the pertinent principles of law, and to state how those principles operate in that factual context. In doing this, concentrate on how the law applies to the facts of your particular problem.

Start your research by referring to your set text book and case list. Often, problem questions are not set as research assessments, so you will already have been given the resources you need to complete it.

Do the facts remind you of any cases? Often facts will be similar in some respects to cases you have learned in lectures. If that is the case, then that is a strong sign that the issues raised in that case are relevant to your problem question. You should research that case and note similarities and differences on the facts.

Make thorough notes

Take careful note of important details and especially of key citations from decided cases which can be used to support your contentions. To properly cite material you must have the building blocks: author, title of source, date of publication, page/paragraph reference.

! *NOTE: Problem questions are about applying law to facts. For this reason, overwhelmingly the sources cited in your response should be case law or legislation. It is generally NOT appropriate to cite your textbook as authority for any propositions of law.*

Cases

Record:

- the case name;
- the law report title, year and first page of the report (if case is reported);
- the medium neutral citation (if the case is unreported);
- the court;
- the paragraph(s) or page number(s) from which you record notes or quotes;
- the identity of the judge(s).

Legislation

Record:

- the short title and year
- the jurisdiction
- the relevant sections and sub-sections.

Write the first draft

Refer back to your mind map and initial thoughts you noted down before you started your research. Has your research changed your thoughts on these? Make any necessary changes to your plan.

Where to start

Write your advice by dealing with each of the issues that arise from the facts in the most logical order.

The order will be dictated by the relationships between the issues and the number of parties. A question of the appropriate remedy, for example, can only be considered after the issue of liability has been determined.

There is a very simple, logical and effective way to approach writing responses to problem questions and that is to use the IRAC approach.

See also:

- 'Structuring written work' (page 19)
- 'Headings and sub-headings' (page 19)
- 'Introduction' (page 20)
- 'Body' (page 21)
- 'Conclusion' (page 23)

and other useful tips on writing above in this Guide.

IRAC

IRAC provides a structure to answering legal problem questions. In short, IRAC stands for:

- I Identify the **ISSUES**
- R State the relevant **RULES** (legal authority)
- A **APPLY** the rules to the facts of the case
- C **CONCLUDE** on the outcome of applying the law to the facts

Each element is considered in more detail below.

Before you can apply IRAC, you must first assess the entire problem question to work out where IRAC needs to be applied. Therefore, read the question carefully to ascertain:

- what broad area of law should be applied to the fact problem (e.g., contract law, criminal law, administrative law etc);
- what cause(s) of action within the broad area of law is relevant to base the client's case upon (e.g., breach of contract, misrepresentation, etc); and
- what elements of each cause of action need to be proved or disproved.

Once you have done the above and identified the live 'issues' that need resolution, you apply IRAC to each of them. Live issues can sometimes be broken up into sub-issues, and you would apply IRAC to each of those sub-issues as well.

Example

The facts provided in a problem question clearly show that the broad area of law to be applied is contract law. A close reading of the facts disclose that the live issues to be resolved relate to the doctrines of misrepresentation, privity of contract and unconscionable conduct. Therefore, you already know that IRAC will be applied three times in your question as you address each of the live issues. It might also be apparent that the misrepresentation issue can be broken down into two sub-issues: (1) proving the misrepresentation and (2) a 'defence' against it. Therefore, IRAC can be applied to both sub-issues.

Read the following example to see how the application of IRAC to the above example might look, it focuses on the misrepresentation issue and sub-issues.

! *NOTE: To highlight where IRAC is being applied in the example below, the elements of IRAC have been put in colour in square brackets in the relevant places. Do **NOT** do this in your writing; it is done below purely for demonstrative purposes.*

! *NOTE: the use of headings to clearly indicate to the reader the structure of the response and where certain issues are being considered.*

Introduction

Susan seeks to avoid a contract of guarantee that she has entered into in favour of her son. The facts suggest that she may have a right to do so by arguing misrepresentation by the Bank ...

[ISSUE] Misrepresentation

[RULES] A party that has entered into a contract relying upon the misrepresentation of the other party to the contract may seek to have the contract rescinded¹. The elements that need to be proven are:

1. A representation... ²
2. Made to the representee... ³
3. Intended to induce... ⁴
4. That in fact induces... ⁵

[APPLICATION] Applying the above rules to the facts of this case, we can see that...

[CONCLUSION] Therefore, it seems that Susan has a viable cause of action to have the contract rescinded for misrepresentation.

[(SUB)ISSUE] Is rescission available?

[RULES] Rescission is only available when... ⁶ ...

[APPLICATION] Applying the above rules to the facts of this case, we can see that...

[CONCLUSION] Therefore, it seems that rescission is a viable remedy for Susan.

[(SUB) ISSUE] However it should be noted at common law that rescission is not available unless...⁷

[RULES] In *X v Y* (2001) 123 CLR 456, it was held that...

[APPLICATION] In the context of these facts, it is therefore possible that the Bank may argue that...

[CONCLUSION] Whilst the Bank may argue ... it is submitted that this does not make substantial rescission an impossibility, therefore...

Conclusion

There is a clear case of misrepresentation here. Susan therefore has the right to... She should be made aware that the Bank might argue ... however....

I: Identify the issues

It is essential that you identify the real live issues on the facts. This means limiting yourself to only discussion areas of controversy. You will lose marks by:

- failing to identify the live issues
- discussing at length issues that are not controversial.

R: State the relevant rules

State the rules you are going to apply in as short and succinct a manner as you can. Do not forget to properly support your statements of the rules by reference to properly cited primary authority.

You should consider the question of comprehensiveness, and the weight of authority of each case. For example, the court concerned may not be an Australian court, or it might be inferior to the court you are before. In either case, its decision will only be persuasive, not binding. Perhaps the legislation has been amended since that case was decided, or the facts may have occurred in a social context different from that which prevails today, thereby lessening the force of any conclusions made by the court.

See also:

- Citation (page 30)

A: Apply the rules to the facts of the case

Stating the law in the abstract and leaving it at that is not the appropriate method for writing an advice on a problem question, for it does not explain how or why the principles you have described are relevant to the facts of the problem. It is not sufficient to state the law in the abstract, and then conclude that A or B must win. The skill you must develop as a lawyer is that of applying the law to the facts. Simply being able to recite the law parrot fashion is no good and will earn you limited marks.

You must explain how the law you have cited applies to the facts of your problem. It is unlikely that the law as stated by the authorities will provide you with a complete answer to the question before you. You will have to develop an argument that encompasses the facts in your case and the law as stated by the authorities in the form of a proposition. Draft any such proposition carefully and consider whether it is sustainable in both logic and law.

In your application, deal with any issues of controversy which might arise. For example, would a different result flow if one particular decision was followed, rather than another of equal authority? Explain which decision is to be preferred and why.

C: Conclude on the outcome of applying the law to the facts

Always come to a conclusion when applying IRAC, even if it is just a short conclusion to a sub-issue. The conclusion should neatly and succinctly sum up the application of the law to the facts. In many cases, the summary may be just a one sentence summary.

Conclusions in law do not have to be all or nothing. Often the law you are being tested on is complex and deals with an area that is not settled. Therefore it is acceptable to conclude in the style of the following example:

Although the issues is not free from controversy, it seems likely that ... but this is not free from doubt.

Because the current law is unclear, it cannot be said with certainty how this issue will be resolved. If the court were minded to find [x] then [y]. However, if the court were minded to find [a] then [b].

It is expected that you will argue in the alternative where the facts and law do not lead to a certain conclusion.

Review and edit your work

See 'Reviewing and editing' (page 50)

Case notes

A case note is a genre of legal writing. It is a concise overview of a case that includes an analysis of its:

- correctness
- value as law
- impact (if any).

A case note is NOT just a summary of the case. Too many students assume it is sufficient to list the parties and then edit down the facts and any legal discussion to fit within the word limit.

The skill in writing a case note is in being able to:

- **isolate** the relevant facts which give rise to the legal issue
- **explain** the reasoning which has led to the decision, and
- **establish** the context of the decision.

Throughout your degree you will be required to write case notes for various subjects. In these assessment tasks the expectation is that your case note may contain the following elements-but not necessarily in this order.

Elements of a case note

Element	Action
Introduction	Briefly identify the case by party name and citation, the nature of the legal issue or issues and perhaps suggest why this case may be of interest.
Procedural history	Is it an appeal from a first instance decision or have there been a series of appeals? If the latter it might be useful to discuss the reasoning in previous decisions.
Facts	What are the circumstances in which the dispute arose? Think about what is relevant to the law. You only need to

	<p>provide enough factual information to explain how the legal issues arose. Identify the parties clearly and be consistent. For example avoid referring to the applicant, plaintiff, aggrieved party or party by name interchangeably.</p>
Legal issues	<p>What is the applicable law, or what has been argued to be the applicable law?</p> <p>Is the dispute about defining specific circumstances when a particular legal principle may be relevant? For example, whether in the circumstances has a duty of care arisen and if there has been a breach of the duty of care; or whether a particular term in a contract be interpreted in a specific way and if that term has been breached based on that interpretation.</p>
Decision	<p>What is the outcome of the case?</p> <p>What was the law the judge or judges applied?</p> <p>What is the reasoning of the judge or judges that has led to that outcome?</p>
Analysis	<p>Is the decision supported by the reasoning ?</p> <p>If it is a split decision (there is a dissenting judgment) is the majority's approach convincing?</p> <p>If the case is the outcome of a series of appeals how does the decision reconcile or justify earlier decisions?</p> <p>How has the case been treated subsequently?</p> <p>Are there any social implications? Will this affect business practice?</p>
Summary	<p>What can you say overall about the importance of the case?</p>

	<p>In order to complete the case note you may have to do further research. How would you familiarise yourself with the law?</p> <p>How would you determine whether the case is important or not?</p>
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Steps to writing a research essay

1. Plan your response (page 82)
2. Research the topic (page 82)
3. Make thorough notes (page 82)
4. Write the first draft (page 84)
5. Review and edit your work (page 85)

Plan your response

Using the table of elements provided on page 80 prepare a plan for your case note. The table itself provides a fairly logical structure for your case note.

Research the topic

- Read the case!
- The case will probably relate to a legal principle studied in your subject. Read the suggested readings and/or the relevant weeks reading for that topic.
- Start searching through peer reviewed journal articles to find relevant material and become familiar with the current thinking on your topic, build up a field of knowledge around the topic. There may be existing case notes on the case you have been given – read them to gain some ideas.

Make thorough notes

Take careful note of important details, and especially of key citations from decided cases which can be used to support your contentions, or quotes by authors of journal

articles or books. To properly cite material you must have the building blocks: author, title of source, date of publication, page/paragraph reference.

Books

Record:

- author's/editor's name and the author of any chapters within the book to which you refer
- title of book
- year of publication
- the edition of the book if it has seen more than one edition
- the page number(s) of whatever notes you take.

Journals

Record:

- author's name
- title of article
- title of journal
- year of volume
- volume number and issue (if relevant)
- page number of first page
- page number of any pages from which you record notes or quotes.

Cases

Record:

- the case name
- the law report title, year and first page of the report (if case is reported)
- the medium neutral citation (if the case is unreported)
- the court
- the paragraph(s) or page number(s) from which you record notes or quotes
- the identity of the judge(s).

Make your notes relevant

*** TIPS ***

- Keep in mind the subject of your essay.
- Do not write down everything; only extract the information which can help in your task. Scan a piece once, or even twice, before beginning to take notes and assess its value.
- Make notes of relevant opinions expressed, and of your preliminary thoughts on those points. Remember that you should develop your own arguments, and not simply adopt someone else's because it may not suit your specific topic.

Organising Notes

Once you have taken notes, or while you are completing this process, give some thought to the organization of those notes, so as to make your writing task easier.

*** TIPS ***

- Organise notes alphabetically by author name or case name.
- Use tabs to identify the most relevant pages.

Write the first draft

Refer back to your mind map and initial the thoughts you noted down before you started your research. Has your research changed your thoughts on these? Make any necessary changes to your plan. Otherwise, refer to 'Writing your first draft' at page 18 for more tips on writing your first draft.

See also:

- 'Structuring written work' (page 19)
- 'Headings and sub-headings' (page 19)
- 'Introduction' (page 20)
- 'Body' (page 21)
- 'Conclusion' (page 23)

and other useful tips on writing above in this Guide.

Review and edit your work

A key element in writing a good essay is leaving enough time to edit your work. If you can finish early and go back to your writing after a day or so you might see areas that could be improved or grammar mistakes that could be corrected.

See 'Reviewing and editing' (page 50)

Reflective Writing

Being able to think critically about your learning, behaviour and responsibilities is a valuable element in developing communication skills in order to interact successfully with clients and colleagues. Reflective thinking is the first step in developing critical self-awareness as a nascent lawyer. As research indicates, reflective writing, in part, contributes towards developing a professional identity because, 'Reflective practitioners probably have better collaborative relationships with their clients' (Neumann 2000, p.411).

Reflective writing can be a very useful way to 'capture' different events and experiences throughout your degree, so that you are able to return to these and review them for different purposes. There are many different ways to engage in reflective writing: for example, keeping a personal professional journal creating blogs or portfolios to record reflections.

Reflective writing is more than a DESCRIPTION or a summary.

Reflective writing is:

- **expressive** (I learnt, I think, I felt/feel, ...),
- **descriptive** (what happened or what enhanced your learning),
- **analytical** (how an event or reading connects to your understanding of a topic, what you have learnt and how clearly you can express it).

The samples below show the difference between **A** descriptive writing and **B** reflective writing.

A. *The article discusses copyright laws in Australia and identifies different types of intellectual property. It provides a definition of the 1995 Trade Mark Act. In Australia the right to first use is given priority over the right form registration*

B. *Reading the article on 'Trade Mark Ownership' I realised that a trade mark is more likely a sign..... The other key point I learnt about was that the author of the trade mark... The other interesting point that I came across was that I was completely confused by until I did some further reading then I realised ...*

For additional information on reflective writing and reflective journals go to the library website at the following address: <http://www.lib.uts.edu.au/help/study-skills/group-work/thinking>

Exams

In order to prepare for an open book exam you need to be familiar with all the material you are permitted to take into the exam.

You will save precious time by having a system in place with post it notes or an index that allows you to navigate your notes and readings efficiently. You will use a modified version of referencing.

You will be expected to structure your answers, develop arguments and write clearly in plain English.

Writing strategies

- unpack the question – highlight key words
- identify instruction verbs – topic words. Students often misunderstand the difference between task verbs ('explain', 'justify', 'analyse', 'critically analyse')
- manage the time – make a plan. Use the blank work page in the exams booklet to do a quick outline of the essay.
- apportion time by the number of marks available for each questions and stick to it. It is much easier to achieve the first 50 per cent of marks in each question than to perfect a single question to a High Distinction level.
- structure your answer with an introduction, body, and conclusion – use headings in the body
- instead of using full citations in an exam essay just state the case name, or, if one of the names is really distinctive, just that case name. (eg, '*Walton Stores*' instead of '*Walton Stores (Interstate) Ltd v Maher* (1988) 164 CLR 387'). If there are two cases with the same name, state the year.

- underline or highlight your citations. This draws the eye of the marker to your authorities and will give them an immediate impression as to whether you have correctly identified the issues.
- If you do not have enough time to attempt every question, attempt a bullet-point response to the remaining questions. You may gain some marks (if you have addressed the correct issues).

Essay questions

A common form of law exam question is a quote followed by a question.

For example, "Positivism has prevailed over natural law theory". Do you agree? Discuss.

In answering the above question, it is apparent that there are two or three parts to it:

1. discussing what positivism is,
2. discussing what natural law theory is, and
3. discussing the relative application of each theory in the law today.

A common error with these question types is not answering all of the question. For example, some students will write down all they know about positivism or natural law theory, but fail to say if they agree or disagree with the proposition that positivism has prevailed over natural law theory.

Practise, practise, practise

If possible, look at past exam questions on the library website, or ask your subject coordinator if they will make some available. If you can practise writing exam questions under the same conditions as the exam (limit yourself to the same time that you will have in the exam) you will be much better prepared than attempting the exam without any practise. At the very least, you will have rehearsed how you can engage with writing an answer and will be able to start planning and writing much more quickly. You will also have become familiar with locating information in your notes. At best, you will have practised writing an answer to a question that is very similar to one that is given in the exam and you will have to save time when planning your response.

E-mail communication

When writing you must always bear in mind who your audience is and the context for your writing. For example, when an email is used to communicate with a lecturer, a work colleague or an employer a different form of expression and tone is required than would be used with a friend.

When addressing a lecturer, a work colleague or an employer you must use a more formal tone. That means no contractions, no text style abbreviations or colloquial language.

You should also use the correct form of address for the person you are writing to: 'Mr ...', 'Mrs ...', 'Ms ...' or use an honorific. If the recipient has indicated it is acceptable to do so you may use their first name. Do not address a person simply by their surname or with 'Hey!' or 'Hi!'

When you sign off use 'Regards' or 'Thanks' and your name.

Email from the University to a student will only be sent to the student's UTS email address. Email sent from a student to the University must be sent from the student's UTS email address. University staff will not respond to email from any other email accounts for currently enrolled students. For further information on email etiquette, see:

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