

THE UNIVERSITY OF QUEENSLAND

TC BEIRNE SCHOOL OF LAW

A GUIDE TO CITATION OF SOURCES AND WRITING STYLE IN ASSIGNMENTS

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A. CITATION OF SOURCES

1. Basic Principles

- The *Australian Guide to Legal Citation* (2nd ed) ('AGLC') shall continue to be the basic standard for citation of sources for the purposes of assessment within the Law School and this Guide should be read in conjunction with the AGLC.
- Where anything in this Guide is inconsistent with the AGLC, this Guide shall prevail.
- Where there is nothing in either this Guide or the AGLC which provides a method of citing a particular type of source, you should devise a method of citation for that source which is consistent with the general scheme of the AGLC.

2. Footnotes – Basic Principles

(a) Format and Content

Footnotes should contain sufficient information about the cited source to enable the reader to retrieve the source, if the reader chooses to do so. It is also desirable that the reader is able to form a preliminary judgement about the currency, relevance and weight of the source. Therefore, footnote references should, as a general rule, contain the following information:-

- the author's name or, if no author is named, the name of the organisation which produced the publication, e.g. Australian Law Reform Commission;
- the title of the source;
- the year in which the source was produced or published;
- the title of any larger work or publication in which the source was found (where applicable);
- the place of publication (if this is not apparent from the other information in the footnote).

Where a footnote refers to more than one source, you must separate the citations of the sources by semi-colons.

You must number footnotes sequentially using Arabic numbers (i.e. 1, 2, 3 ...). If you are preparing a work with multiple chapters, e.g. a thesis for a research higher degree, you must recommence the numbering of footnotes at the beginning of each chapter.

(b) When to Footnote [AGLC 1.1.1]

You must, as a general rule, support statements of legal propositions with appropriate authority. When asserting that a particular proposition is settled law, you should use primary sources (i.e. cases and legislation) rather than secondary sources (e.g. journal articles, textbooks). Where the law is unclear or in dispute, you may use secondary sources to support an argument in favour of one proposition or another. Remember that secondary sources provide information or opinions about what the law is or ought to be, but they are not sources of law in themselves. Moreover, statements made by a lecturer in the course

Learning Guide or in class have no authority independently of the primary and secondary sources upon which the lecturer has relied. Learning Guides and lectures are meant to guide you through the primary and secondary sources. They are not a substitute for engaging with the primary and secondary sources directly.

Wherever your argument relies upon material in a primary or secondary source, you should make a footnote reference to the source. Some propositions of law are so well-established or so basic or axiomatic that a reference to a source is not required.

Example:-

A promise set forth in a deed is enforceable at common law at the suit of a party to the deed, notwithstanding the absence of consideration.

Of course, if you use a form of words which you have found in a primary or secondary source, you must cite the source. When in doubt, cite the source.

Where two or more sentences constitute what is, in effect, a single proposition and that proposition is drawn from or inspired by the same page (or paragraph) of the same source, it is sufficient to insert one footnote only at the end of the last relevant sentence.

Unless you are specifically requested to do so, you do not have to provide a separate bibliography. Footnotes are adequate.

(c) Placement

The *AGLC* states that 'ordinarily' footnote references should be placed *after* the relevant punctuation. This is particularly appropriate where the whole of the preceding sentence refers to or is drawn from or inspired by the source.

Example:-

Cope has noted that fiduciary relationships which arise out of joint venture agreements are likely to be more limited in scope than those which are associated with partnerships.¹

...

¹ Malcolm Cope, *Equitable Obligations: Duties, Defences and Remedies* (Lawbook Co, Sydney, 2007) 80.

3. Subsequent References [AGLC 1.2]

(a) Sources other than Legislation

Where references to the same source appear in consecutive footnotes, the second footnote should use the expression 'ibid'. Where the second footnote refers to the same page (or paragraph) as the first footnote, 'ibid' is sufficient. Where the second footnote refers to a

different page (or paragraph) in the same source, the second footnote should refer to the new page or paragraph number, as the case may be. (Whether you should refer to pages or paragraphs depends upon the way that the particular source is organised. See Section 4 – Specific Types of Sources.) ‘Ibid’ should be capitalised when it appears at the beginning of a footnote. There is no need to italicise ‘Ibid’, even though it has a Latin origin.

Where two footnotes which refer to the same source are separated by one or more footnotes which refer to another source, the subsequent footnote should refer to the author’s name and the number of the footnote at which the source is first mentioned.

Examples:-

¹ Malcolm Cope, *Equitable Obligations: Duties, Defences and Remedies*, (Lawbook Co, Sydney, 2007) 153.

² Ibid 154.

³ *Keech v Sandford* (1726) Sel Cas T King 61; 25 ER 223.

⁴ Cope, above n 1, 156.

Where more than one work by the same author is referred to in the footnote in which the sources are first mentioned, the sources may be distinguished in subsequent footnotes by including an abbreviated version of the title in the reference, e.g. Cope, *Equitable Obligations*, above n 1, 157.

(b) Legislation

Legislation should be cited in full in all subsequent references.

4. Specific Types of Sources

(a) Case Law

Where a case is reported in a print law reports series, the citation should consist of:-

- the case name, in italics, or if you are unable to italicise, underlined;
- the year in brackets – parentheses, i.e. (2008), for reports which have sequential volume numbers and square brackets, i.e. [2008], where the year is needed in order to locate the correct volume;
- the recognised abbreviation of the name of the series of law reports – see Donald Raistrick, *Index to Legal Citations and Abbreviations* (2nd ed, Bowker-Saur, London, 1993);
- the page number at which the report of the case commences;
- the pinpoint page number, separated from the commencing page number by a comma (only when referring to a specific statement in the judgment);
- the name of the judge in parentheses (optional); and
- the name of the court (when this is not apparent from the citation of the case or has not been stated in the main text).

Where a case has been reported in the ‘authorised’ reports for that court, you should use that citation in preference to any other citation which you may have.

Example:-

Muschinski v Dodds (1985) 160 CLR 583, 620 (Deane J).

Where a case is not reported in print reports or you are unable to get access to a print version of the report, the ‘medium-neutral’ citation, which is used in relation to the electronic reporting of the case, may be used.

Example:-

Farah Constructions Pty Ltd v Say-Dee Pty Ltd [2007] HCA 22 [181].

Note that this format has a judgment number, rather than a commencing page number, and pinpoint references are to be made using the paragraph number in square brackets.

Where an English case was originally reported in the so-called nominate reports, the reference should include the citation of the case in both the nominate report series and the *English Reports*.

Example:-

Keech v Sandford (1726) Sel Cas T King 61; 25 ER 223.

Note the correct forms for referring to particular categories of judges:-

Writing	Speech
Lord Hailsham of St Marylebone LC	The Lord Chancellor, Lord Hailsham of St Marylebone / My Lord / His Lordship
Lord Wilberforce	Lord Wilberforce / My Lord / His Lordship
Baroness Hale	Lady Hale / My Lady / Her Ladyship
Gleeson CJ	Chief Justice Gleeson / His Honour
Lord Denning MR	The Master of the Rolls, Lord Denning / My Lord / His Lordship
Danckwerts LJ	Lord Justice Danckwerts / His Lordship
Arden LJ	Lady Justice Arden / Her Ladyship
McMurdo P	President McMurdo / Her Honour
Williams JA	Justice of Appeal Williams / His Honour
Megarry VC	The Vice-Chancellor, Sir Robert Megarry / His Lordship
Beatson J	Justice Beatson / His Lordship
Kiefel J	Justice Kiefel / Her Honour

(b) Legislation

The citation should consist of:-

- the short title of the Act or Regulations (or, if there is no short title, the long title), in italics or, if you are unable to italicise, underlined;

- the year in italics or underlined;
- the recognised abbreviation of the relevant jurisdiction, in parentheses; and
- the pinpoint reference to the relevant section or subsection (if applicable).

Example:-

Agricultural Chemicals Distribution Control Act 1966 (Qld) s 3

Where you are referring to a legislative provision in the text of your work, you should write as you would speak.

Example:-

INCORRECT – *Trusts Act 1973 (Qld) s 58* states that ...

CORRECT – Section 58 of the *Trusts Act 1973 (Qld)* states that ...

(c) *Books*

In accordance with the principle that the reader should be able to locate the source using the citation, the citation for a book should include the following information:-

- the name(s) of the author(s) as they appear on the title page of the book, i.e. whether you use the full first name or initials only depends upon what appears on the title page;
- the title of the book, in italics or, if you are unable to italicise, underlined;
- where there is more than one edition of the book, the relevant edition;
- the publisher's name;
- the city of publication;
- the year of publication; and
- pinpoint reference to a page number (if applicable), separated from the other information by a comma.

Example:-

El Sykes, DJ Lanham, RRS Tracey and KW Esser, *General Principles of Administrative Law* (4th ed, Butterworths, Sydney, 1997) 107.

Note that the bibliographic information is placed in parentheses.

Where a book has numbered paragraphs, the pinpoint reference may be to a paragraph number rather than to a page number, if this is more convenient. You must place the paragraph number in square brackets.

(d) Book Chapters

You must include, in addition to the citation of the book, the name of the author of the chapter, the title of the chapter, the page number of the book at which the chapter commences and any relevant pinpoint reference.

Example:-

Lionel Smith, 'Tracing' in Andrew Burrows and Lord Rodger of Earlsferry (eds), *Mapping the Law: Essays in Memory of Peter Birks* (Oxford University Press, Oxford, 2006) 119, 123.

(e) Journal Articles

You must include the following information:-

- the author's name as it appears at the beginning of the article;
- the title of the article;
- the year in brackets – parentheses, i.e. (2008), for journals which have sequential volume numbers and square brackets, i.e. [2008], where the volumes are designated by year rather than volume;
- the volume number (if applicable);
- where the page numbers are not numbered continuously throughout the entire volume, the relevant issue number, in parentheses;
- the full journal title, in italics or, where you are unable to italicise, underlined;
- the page number at which the article commences; and
- any applicable pinpoint reference, separated from the other information by a comma.

Examples:-

RB Grantham and CEF Rickett, 'Property Rights as a Legally Significant Event' [2003] *Cambridge Law Journal* 717.

Richard Nolan, 'Property in a Fund' (2004) 120 *Law Quarterly Review* 108.

Vincent P Bantz, Rachel Baird and Anthony E Cassimatis, 'After 60 Years – The United Nations and International Legal Order' (2005) 24 *University of Queensland Law Journal* 259, 261.

Jeremy Shearmur, 'Free Speech, Offence and Religion' (2006) 22(2) *Policy* 21, 24.

(f) Newspaper Articles

The essential information is the name of the author, the title of the article, the title of the newspaper, the place of publication (in parentheses), the date and the page number.

Example:-

Ashley Midalia, 'Jury fails again to reach verdict', *The Australian Financial Review* (Sydney), 19 December 2007, 3.

If you obtain the article from the internet edition of the newspaper, include the Uniform Resource Locator (URL) in lieu of the page number.

(g) Internet Materials

Do not cite internet materials if the work is accessible in published form. You should exercise careful judgement about whether you should use internet materials as a source at all. Remember that practically *anyone* can place material on the internet or edit material on certain websites (e.g. *Wikipedia*). It is important to think about what it is that makes the source authoritative in relation to the matter for which the source is cited. You should consider whether, for example:-

- the author has a reputation as an expert in the field;
- the website is a recognised repository of information of a particular type, e.g. AustLII or Queensland Parliamentary Counsel website;
- the information comes from an article in a reputable journal which is available only in electronic format; or
- the source is a government department or other authoritative organisation.

The citation should include sufficient information to enable a reader to form a judgement about the authoritativeness of the source. Certainly, you should include as much of the following material as is available:-

- the author's name, if known;
- the title of the document or the relevant section or page within the website, in single inverted commas, i.e. like the title of a journal article or book chapter;
- the website name (i.e. the homepage name), if this is different from the name of the document, section or page, in italics or underlined, i.e. like the title of a book;
- a pinpoint reference, if relevant and feasible;
- the Uniform Resource Locator (URL) to the relevant page or section, enclosed in < >.

The date of publication is a particular problem. If the material being cited is an article in an electronic journal or another academic paper which is only available online and bears a particular date, then you should place the year in parentheses after the title of the document. If the information is taken from a government or other public information

website (and, accordingly, may be updated from time to time) you should state the last date on which you accessed the material at the end of the citation.

Examples:-

Australian Electoral Commission, 'How the House of Representative votes are counted', *Australian Electoral Commission*, <www.aec.gov.au/Voting/counting/index.htm> (at 17 December 2007)

Nicolee Dixon, 'An excise by any other name is...still an excise' (1997) *National Law Review* 1, <<http://pandora.nla.gov.au/nph-arch/01998-Mar-19/http://www.nlr.com.au/ARTICLES/001/001EXCIS.HTM>>

B. WRITING STYLE

1. Basic Principles

The Law School recognises that there are different styles which are suitable for legal writing and that it is impossible to set down a hard and fast rule for every occasion. The purpose of this Guide is to provide students with general guidance as to the minimum standard of English expression expected of them and to alert them to a number of common pitfalls.

When writing an assignment, you must observe the general rules of English grammar, syntax and punctuation. You should prefer standard British/Australian spelling to American spelling, e.g. 'labour' not 'labor'. (Note that 'Australian Labor Party' is an exception to this rule because that organisation has adopted 'Labor' as the official spelling of its name.) If you are unsure of the standard British/Australian spelling, you should consult HW Fowler, *The New Fowler's Modern English Usage* (3rd ed, Clarendon Press, Oxford, 1996). Quotations should retain the author's spelling. Formal, precise modes of expression should be preferred to colloquial modes of expression, e.g. contractions, abbreviations and slang should not be used.

Examples:-

INCORRECT – The plaintiff claimed compo.

CORRECT – The plaintiff commenced a claim for compensation.

INCORRECT – Since the defendant hadn't entered an appearance, the court entered judgment in favour of the plaintiff.

CORRECT – Since the defendant had not entered an appearance, the court entered judgment in favour of the plaintiff.

2. Common Pitfalls

(a) Active Voice and Passive Voice

Lawyers should, as a general rule, write in *active voice* rather than *passive voice*. Passive voice involves referring to an action without referring to an acting subject. Passive sentence constructions are less precise than active constructions. When describing actions or obligations to perform an action, one should specify who performs the action or whom the law requires to perform the action.

Example:-

INCORRECT – Compensation must be paid to the victim.

CORRECT – The wrongdoer must pay compensation to the victim.

When the identity of the person who performs an action or who must perform an action is important, active voice must be used. It is particularly important that you use active voice when drafting contracts, trust deeds, wills and other documents which define people's rights and duties. There will be occasions when passive voice is acceptable. For example, 'unless the contrary is proved' could also be rendered as 'unless someone proves the contrary', but, if 'someone' could be anybody in the world, there is no compelling reason to prefer the active construction over the passive construction.

(b) Non-parallel Sentence Structure

This problem arises when the writer is listing a number of items in a single sentence. Meehan and Tulloch suggest that you use parallel grammatical structures for the various items in the list.¹

Example:-

INCORRECT – In the event of a trustee's insanity, illness, physical incapacity, an act of bankruptcy is committed or the trustee commits a criminal offence, the trustee may be removed from office and the remaining trustees may appoint a replacement trustee.

CORRECT - If any trustee commits a criminal offence, becomes insane, is unable to act as a trustee owing to illness or other physical incapacity or commits an act of bankruptcy, the remaining trustees may remove the trustee from office and appoint a replacement trustee.

We can see the problem with the first example when we attempt to rewrite it as a series of paragraphs:-

In the event of a trustee's –

¹ Michael Meehan and Graham Tulloch, *Grammar for Lawyers* (2nd ed, LexisNexis Butterworths, Sydney, 2007) 99.

- (a) insanity;
 - (b) illness;
 - (c) physical incapacity;
 - (d) an act of bankruptcy is committed; or
 - (e) the trustee commits a criminal offence,
- the trustee –
- (f) may be removed from office; and
 - (g) the remaining trustees may appoint a replacement trustee.

Each individual paragraph must form a grammatically complete sentence (or sub-clause) with the opening words of the sentence. Paragraphs (d) and (e) do not conform to the overall structure of the sentence which has been set by the opening words and paragraphs (a), (b) and (c). The second example complies with this requirement.

- If any trustee –
- (a) commits a criminal offence;
 - (b) becomes insane;
 - (c) is unable to act as a trustee owing to illness or other physical incapacity;
- or
- (d) commits an act of bankruptcy,
- the remaining trustees may –
- (e) remove the trustee from office; and
 - (f) appoint a replacement trustee.

Note that, where lettered or numbered paragraphs are used, they are to be separated from one another by semi-colons.

(c) Dangling Clauses

A dangling clause is a subordinate clause which 'does not apply grammatically to the person or thing it is meant to modify'.² Consider the following examples:-

As Mary's only living relative, the entire estate passed to Henrietta.

Having been found guilty of murder, a sentence of life imprisonment was imposed on him.

The subject of the main clause of the first sentence is 'the entire estate', but the subordinate clause refers to Henrietta. The subject of the main clause in the second sentence is 'a sentence of life imprisonment', but the sentence of life imprisonment has not been found guilty of murder. One could overcome the problem by reformulating the sentences in the following way:-

As Mary's only living relative, Henrietta inherited the whole of Mary's estate.

² Ibid 100.

Having been found guilty of murder, the prisoner was sentenced to life imprisonment.

In these sentences, the subordinate clause refers to the subject of the main clause. An alternative course of action would be to reconstruct the sentence so that both the main and subordinate clauses have their own subject.³ In the case of the second example, this has the advantage of eliminating the use of passive voice, i.e.:-

The jury having found the prisoner guilty of murder, the judge sentenced him to life imprisonment.

Of course, if there were more than one prisoner, one would be well-advised to repeat 'the prisoners' in the main clause (rather than use 'them') in order to avoid any suggestion that the jury were sentenced to life imprisonment.

(d) 'Such' as a Demonstrative Adjective or Pronoun

Meehan and Tulloch have observed that phrases such as 'such people', 'such beneficiaries' and 'such amounts' are ambiguous. They could refer *either* to the particular people, beneficiaries or amounts that were mentioned earlier in the document *or* people, beneficiaries or property of that kind.⁴ Where you intend the former meaning, you should use *this*, *that*, *these* and *those* as it is appropriate, e.g. 'this person', 'that party', 'these beneficiaries', 'those amounts'.

Example:-

The trustees shall hold the trust fund upon trust for the children of the settlor who are alive at the date of this deed and, when the youngest of those children attains the age of 21 years, shall distribute the capital and income of that fund among those children in equal shares.

(e) Split Infinitives

A split infinitive occurs where an adverb or adverbial phrase is placed between the particle 'to' and the remainder of the infinitive of the verb, e.g. 'to boldly go'. Adverbs include words such as 'not', 'never', 'always' and 'now'. The rationale which underlies the prohibition of split infinitives is that the infinitive of the verb is, for grammatical purposes, one word. The modern consensus appears to be that split infinitives are not *always* objectionable and are sometimes necessary in order to express particular subtleties.⁵ For example, there may be literary contexts in which it is necessary to distinguish between a person who decides '*not* to conform' and a person who decides 'to *not* conform'. That said, use of split infinitives is often careless and unnecessary. You are well-advised to heed Meehan and Tulloch's advice that 'in professional legal contexts, it is best *not* to split'.⁶

³ Ibid.

⁴ Ibid 85.

⁵ Ibid 27.

⁶ Ibid (emphasis added).

Example:-

INCORRECT – It is the trustee’s obligation to entirely distribute the trust fund among the eligible beneficiaries.

CORRECT – It is the trustee’s obligation to distribute the trust fund entirely among the eligible beneficiaries.

You might note that one can avoid the problem of the placement of ‘entirely’ by rephrasing the sentence in this way:-

It is the trustee’s obligation to distribute the entire trust fund among the eligible beneficiaries.

(f) Incorrect Apostrophe Use

Apostrophes are used in English for two purposes:-

1. to indicate genitive or possessive case, e.g. *Law’s Empire*; or
2. to indicate that the word is a contraction, e.g. can’t, couldn’t, won’t.

The second use is not permitted in formal legal writing. You must use ‘cannot’, ‘could not’ or ‘will not’.

In relation to genitive/possessive use, you should note the following matters:-

1. the genitive/possessive form of *it* is *its* (it’s = it is);
2. the genitive/possessive form of a regular plural noun (i.e. plurals which end with the letter *s*) is to be produced by adding an apostrophe only;
3. the genitive/possessive form of a singular noun which ends with the letter *s* is to be produced by adding an apostrophe and the letter *s*.

The genitive/possessive form of a person’s name which ends with the letter *s* is a difficult case. Since there does not appear to be a clear consensus on the issue, either of the following is permissible:-

Birks’ approach to the taxonomy of private law obligations ...

Birks’s approach to the taxonomy of private law obligations ...

(g) Quotations

The *AGLC* states that quotations of three lines or less should be incorporated into the text and enclosed by single quotation marks. Quotations of more than three lines are to be single-spaced indented from the left margin and are not to be enclosed in quotation marks (i.e. a block quotation). This is a good rule of thumb, but the crucial matter is whether the quotation can be accommodated within the grammatical structure of the main text without

any awkwardness of expression. If the quotation is a complete sentence, it may be appropriate to use the block quotation method, even though the length of the quotation is three lines or less. Where the first word of a block quotation is not the first word of a sentence in the source (but the quotation forms a complete sentence), you should begin the quotation with a capital letter in square brackets.

Example:-

[A] sentence must have a principal clause containing a finite verb and, almost always, a subject. Dependent or subordinate clauses, even when they contain finite verbs, cannot stand alone as sentences.¹

...

¹ Michael Meehan and Graham Tulloch, *Grammar for Lawyers* (2nd ed, LexisNexis Butterworths, Sydney, 2007) 96.

If you wish to shorten a long quotation by removing words from the middle of the quotation, you must use ellipses (...) to indicate the points at which words have been removed.

[A] sentence must have a principal clause which contains a finite verb and, almost always, a subject. Dependent or subordinate clauses ... cannot stand alone as sentences.

When removing words from a quotation, you should take care not to misrepresent the author's emphasis or meaning.

(h) Terms Easily Confused

Meehan and Tulloch have provided a list of commonly confused and misused terms.⁷ It suffices, for present purposes, to mention a few examples of confusion which occur frequently in legal writing.

- 'Affect' is a verb, e.g. 'How did the prevailing economic and political environment in nineteenth century England *affect* the development of the freedom of contract idea?'. 'Effect' is a noun, e.g. 'What was the *effect* of the prevailing economic and political environment in nineteenth century England upon the development of the freedom of contract idea?'
- 'Alternate' as an adjective refers to the fact that one thing alternates with another, e.g. 'each alternate week'. 'Alternative', as a noun and as an adjective, refers to the existence of a choice between one thing or the other, e.g. 'Mediation is an alternative to traditional dispute resolution in the courts of law, i.e. *alternative* dispute resolution.'

⁷ Meehan and Tulloch, above n 1, [3.62].

- ‘Counsel’ means an adviser or advisers (particularly a barrister or barristers) or the advice given by that person or those persons. It can be used as a verb to refer to the act of giving advice. ‘Council’ is a body of people who make decisions, e.g. the Brisbane City Council. It is always a noun.
- ‘Principal’ means the thing or person of primary importance, e.g. the head of a school, the person to whom a fiduciary owes fiduciary obligations, the sum of money which has been invested in contrast to the interest which has been earned upon that sum. ‘Principle’ refers to a proposition, usually of a legal or moral character, e.g. ‘John Rawls articulated the difference principle in *A Theory of Justice*.’

(i) *Words of Foreign Origin*

The general rule is that words of foreign origin ought to be italicised. Of course, everyday English (including the everyday terminology of law and government) includes many words of foreign origin, e.g. Parliament, royal, ombudsman, smorgasbord, pizza, patio, siesta. Borrowed words such as these should not be italicised. They are accepted as part of ordinary, *everyday English* and do not necessarily have a purely English alternative which captures their precise meaning. For example, one would not use the purely Anglo-Saxon ‘kingly’ as a substitute for the French ‘royal’. These two words have different connotations.

Italicisation should be used for words or phrases of foreign origin which are used in academic and literary English but which are not accepted as part of the everyday English vocabulary. These words and phrases will, more often than not, have an English substitute, but the foreign word or phrase expresses the concept more succinctly or more euphoniously than any English alternative. Examples are *Schadenfreude* and *savoir faire*. Note that, when using German nouns, one should follow the German convention of capitalising the first letter of the word. Phrases such as *inter alia*, *a fortiori* and *mutatis mutandis* ought to be italicised. Whether those phrases or their English substitutes should be used in a particular situation is a matter for individual judgement. If you decide to use the Latin phrase, you must italicise it.