

ANZSI PROFESSIONAL DEVELOPMENT PROGRAM

Indexing Legal Material:

Legal Cases

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1. Introduction

1.1 Types of legal systems

Today we'll be looking at how the details of legal actions are indexed in general indexes and in Tables of Cases in legal texts. But first, for some context, we'll begin with a bit of background information about the different types of legal systems that are operating in the world today.

In general, throughout the world, there are 5 main legal systems in use:

Civil law systems	<ul style="list-style-type: none">• Origin in Roman legal tradition• Vary widely from country to country• Inquisitorial judicial system• Comprehensive and regularly updated legal codes• Case law is secondary resource.
Common law systems	<ul style="list-style-type: none">• Origin in British legal tradition• Adversarial judicial system• Although there are statutes, there is heavy reliance on precedent in case law.
Customary law	<ul style="list-style-type: none">• Unwritten laws, guarded, dispensed and passed down by elders (e.g., Aboriginal law)
Religious legal systems	<ul style="list-style-type: none">• Law emanates from texts or traditions within a given religious tradition (e.g., Islamic law)
Mixed legal systems	<ul style="list-style-type: none">• Two or more of the systems listed above

1.2 Global distribution of legal systems

The map on the following page shows where the different systems operate.

Looking at the map, we can see that in addition to the the United Kingdom, Common Law systems operate in: the Irish Republic, Australia, New Zealand, USA, Canada, & as part of mixed systems in Canadian province of Quebec, PNG, India, Burma, South Africa, Botswana, Namibia, Kenya, Nigeria, Sudan, Tanzania, Uganda, Guyana.

Types of Legal Systems

SOURCE: <https://guides.law.sc.edu/c.php?g=315476&p=2108388>

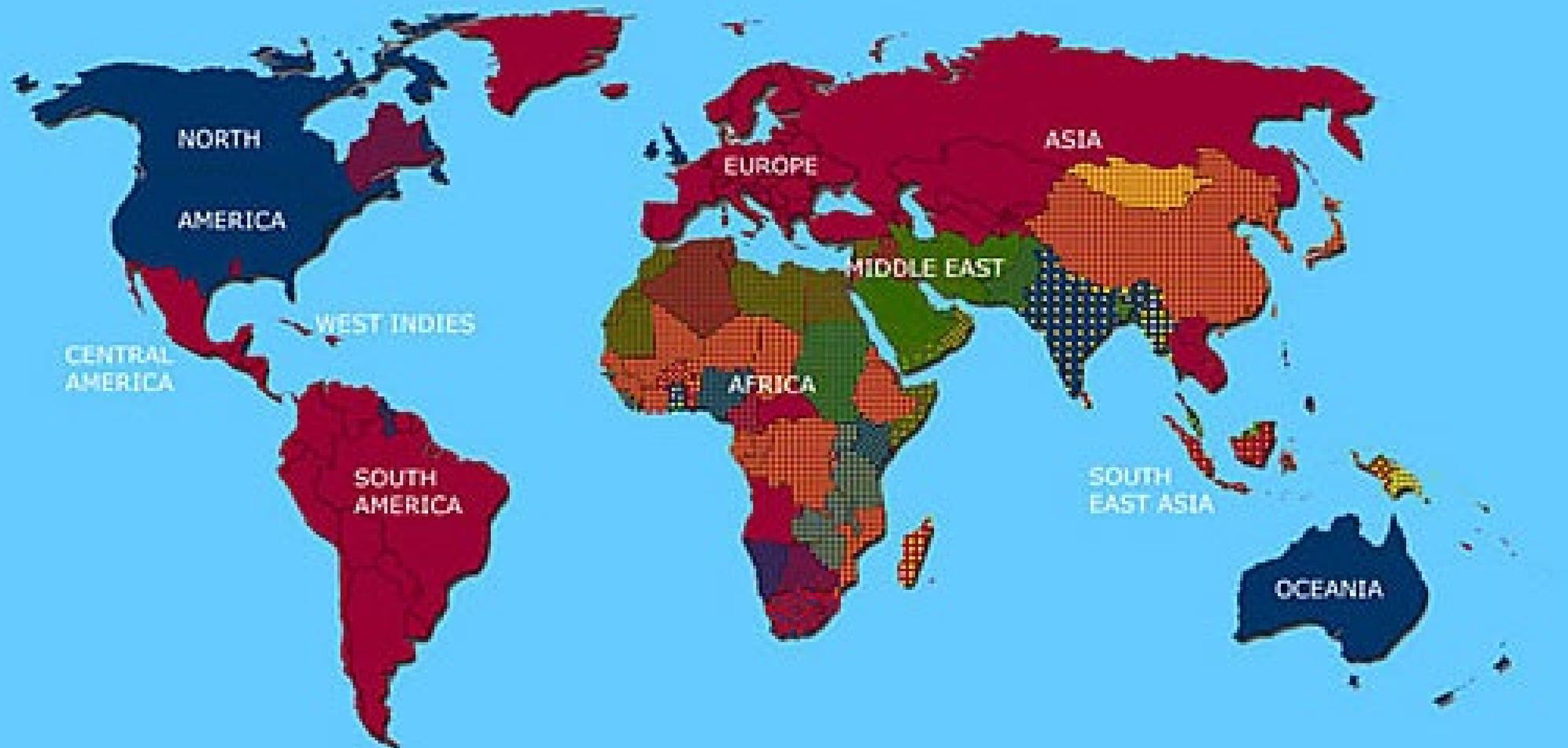
CIVIL LAW

COMMON LAW

MUSLIM LAW

CUSTOMARY LAW

MIXED SYSTEM



2. Legal case citations: Elements and presentation

Case citations are essentially bibliographical details and are structured (and styled) to aid easy location of the associated case report.

2.1 Reported decisions

Reported decisions are decisions that have been published in a law report series.

2.1.1 Forms

Reported decisions may take 3 different forms:

- Where the law report has only one volume per year:
- Where the law report has more than one volume per year:
- Where the law report is identified by volume not year:

2.1.2 Elements

Examples of the elements and presentation of citations for each of these types of reported decisions is shown on the following page. To aid clarity, the examples are colour-coded to match each element with its presentation.

2.1.3 Presentation

The table on page 7 provides examples for how each of the three different forms of reported decisions are presented as a:

- citation in text
- general index entry
- Table of Cases entry

BASIC ELEMENTS OF CASE CITATIONS: REPORTED DECISIONS

1. Where law report has only one volume per year:

parties | **[year]** | **law report abbreviation** | **first page** | **pinpoint reference**

e.g. *Gillen v Quinn* [2009] AC 106, 109, 136–7

2. Where law report has more than one volume per year:

parties | **[year]** | **volume** | **law report abbreviation** | **first page** | **pinpoint reference**

e.g. *Davis v Gillen* [2016] 3 Qd R 93, 128

3. Where law report is identified by volume not year:

parties | **(year)** | **volume** | **law report abbreviation** | **first page** | **pinpoint reference**

e.g. *Gillen v Victoria* (1999) 49 ALR 1, 33–7

Indexing and Tabling Reported Decisions

1. Where law report has only one volume per year:

Citation in text	<i>Gillen v Quinn</i> [2009] AC 106, 109, 136–7
General index entry	<i>Gillen v Quinn</i>145
Table of Cases entry	<i>Gillen v Quinn</i> [2009] AC 106145

2. Where law report has more than one volume per year:

Citation in text	<i>Davis v Gillen</i> [2016] 3 Qd R 93, 128
General index entry	<i>Davis v Gillen</i>145
Table of Cases entry	<i>Davis v Gillen</i> [2016] 3 Qd R 9388–92

3. Where law report is identified by volume not year:

Citation in text	<i>Gillen v Victoria</i> (1999) 49 ALR 1, 33–7
General index entry	<i>Gillen v Victoria</i>145
Table of Cases entry	<i>Gillen v Victoria</i> (1999) 49 ALR 1255

2.2 Unreported decisions

When a judgment is handed down by a court the text of the decision is usually published very quickly on the court webpage. Soon afterwards, decisions from Australian courts are also published in a variety of legal databases, including AustLII, Lexis Advance and Thomson's Westlaw AU.

These decisions are referred to as unreported judgments because they have not been published in a law report series.

An unreported judgment may subsequently be reported in one or more law report series.

There is debate about the precedent value of unreported decisions. However, they are used extensively in practice and in academia as they may contain the only statement of the law on a particular.

2.2.1. Forms

There are two forms of unreported decisions:

Medium Neutral Citation	This is a citation system that does not depend on a publisher or medium. Pinpoint references are to paragraph numbers and are enclosed in square brackets.
Without Medium Neutral Citation	These relate to pre-1990s documents. Pinpoint references are to page numbers, and may also include paragraph numbers.

2.2.2 Elements

Examples of the elements and presentation of citations for both types of unreported decisions are shown on the following page. To aid clarity, the examples are colour-coded to match each element with its presentation.

2.2.3 Presentation

The table on page 10 provides examples for how each of the forms of unreported decisions are presented as a:

- citation in text
- general index entry
- Table of Cases entry

BASIC ELEMENTS OF CASE CITATIONS: UNREPORTED DECISIONS

1. Decisions with a medium neutral citation:

parties | [year] | unique court identifier | judgment no., | [pinpoint reference]

e.g. *Hooper v Australian Electoral Commission* [2015] HCASL 247, [25]

2. Decisions without a medium neutral citation:

parties | (court, | judge(s), | full date) | [pinpoint reference]

e.g. *Bruinsma v Menczer* (Supreme Court of NSW, Santow J, 16 November 1995) 45

Indexing and Tabling Unreported Decisions

1. Decisions with a medium neutral citation:

Citation in text	<i>Hooper v Australian Electoral Commission</i> [2015] HCASL 247, [25]
General index entry	<i>Hooper v Australian Electoral Commission</i>96
Table of Cases entry	<i>Hooper v Australian Electoral Commission</i> [2015] HCASL 24796

2. Decisions without a medium neutral citation:

Citation in text	<i>Bruinsma v Menczer</i> (Supreme Court of NSW, Santow J, 16 November 1995) 45
General index entry	<i>Bruinsma v Menczer</i>329
Table of Cases entry	<i>Bruinsma v Menczer</i> (Supreme Court of NSW, Santow J, 16 November 1995)329

2.3 Foreign cases

Cases from jurisdictions outside Australia may be cited according to different authorities. For instance, the elements of case names may appear in a different order, and there may be differences of accepted abbreviations, punctuation and typography.

2.3.1 Citation guides

Guidance on how to cite foreign cases can be found in the following Legal Citation Guides

Australian Guide to Legal Citation, 4th edition, Melbourne: Melbourne University Law Review Association & Melbourne Journal of International Law, 2018.

<<https://law.unimelb.edu.au/mulr/aglc/about>>. [This guide can be purchased online or a free read-only PDF is available to download.]

OSCOLA The Oxford Standard for Citation of Legal Authorities, 3rd edition, Faculty of Law, University of Oxford, 2006.

<https://www.law.ox.ac.uk/sites/files/oxlaw/oscola_2006.pdf> [Since the fourth edition was published (2012), the third has been available as a free download. It includes a useful section on international law which was not included in the fourth edition.]

The Bluebook: A Uniform System of Citation, 21st edition, Columbia Law Review, Harvard Law Review, University of Pennsylvania Law Review & Yale Law Journal.

<<https://www.legalbluebook.com/bluebook/v21/tables/t2-foreign-jurisdictions>> [The most recent edition is available for purchase or as an online subscription, but there is free access to very useful summaries of citation guides for a wide range of countries including Australia].

2.3.2 United States citations

On the following page, there are examples of the elements and presentation of both reported and unreported decision in the United States.

FOREIGN CASE CITATIONS: United States

Reported decisions

parties, | volume | report series | series no. | first page | , pinpoint | (jurisdiction and court/district, | year)

e.g. *Loveladies Harbor Inc v United States*, 28 F 3d 1171, 1185, 1190 (Fed Cir, 1994)

McDonald v Bowman, 433 P 2d 437, 441, 452 (Kan, 1967)

Unreported decisions

parties | (jurisdiction and court/district, | Docket or reference no., | full date) | 'slip op' pinpoint

e.g. *Charlesworth v Mack* (1st Cir, No 90-567, 19 January 1991) slip op 3458, 3564

Torres v Oklahoma (Okla Ct Crim App, No PCD-04-442, 13 May 2004) slip op 7

3. Parties to legal actions

3.1 Individuals

Where the parties are individuals, given names and initials should be omitted:

Citation in text	<i>Karen A Gillen v Madeleine Davis</i> (2020) 171 CLR 20
General index entry	<i>Gillen v Davis</i>
Table of Cases entry	Gillen v Davis (2020) 171 CLR 20

3.2 Corporate names

Where the corporate name can be mistaken for a personal name, and does not include an indication of its corporate status (such as Co or PtyLtd), it is good practice to qualify it.

Some examples are provided on the next page of how to deal with the following situations:

- Personal names in corporate names
- Personal name doesn't give indication of corporate status
- Plaintiffs with less familiar corporate names which include given names/initials

3.3 The Crown

In case citations, the Crown may be referred to as a party in a number of ways:

- The Crown
- The King
- *Rex*
- The Queen
- *Regina*

In indexes and Tables of Cases, these terms should be abbreviated to 'R', except where the Crown is the respondent. See examples on page 15.

PARTIES – Corporate Names

Personal names in corporate names

[company v partnership]

David Jones Ltd v Duane Reid

[company v individual]

John Fairfax Publications Pty Ltd v Rivkin

Name doesn't include indication of corporate status

Lipkin Gorman v Karpnale Ltd [1988] UKHL 12

Lipkin Gorman (a firm) v Karpnale Ltd [1988] UKHL 12

David Jones Ltd v Duane Reid (partnership)

Plaintiffs with less familiar corporate names which include given names/initials

John Mcilwraith Industries Ltd v Phillips (1958) 98 CLR 529

Mcilwraith (John) Industries Ltd v Phillips (1958) 98 CLR 529

PS Chellaram & Co Ltd v China Ocean Shipping Co. [1991] HCA 36

Chellaram (PS) & Co Ltd v China Ocean Shipping Co. [1991] HCA 36

PARTIES – The Crown

The Crown; The King / *Rex*; The Queen / *Regina*

The above terms should be abbreviated to ‘R’, except where the Crown is the respondent

Citation in text	<i>The Queen v Falconer</i> (1990) 171 CLR 30
General index entry	<i>R v Falconer</i>
Table of Cases entry	R v Falconer (1990) 171 CLR 30
Citation in text	<i>Regina v Banner</i> (1970) VR 240
General index entry	<i>R v Banner</i>
Table of Cases entry	R v Banner (1970) VR 240
Citation in text	<i>Lim Chin Aik v Regina</i> [1963] AC 160
General index entry	<i>Lim Chin Aik v Regina</i>
Table of Cases entry	Lim Chin Aik v Regina [1963] AC 160

3.4 Governments

Governments may be referred to as a party in a number of ways., e.g., Commonwealth, Commonwealth of Australia, or The Commonwealth of Australia.

The following tables illustrate how the names of governments should be presented in entries in general indexes and in Tables of Cases.

Citations in text	<i>The Commonwealth v Verwayen</i> [1990] HCA 39, [55], [60]
General index entry	Commonwealth v Verwayen
Table of Cases entry	Commonwealth v Verwayen [1990] HCA 39

Citation in text	<i>The State of Western Australia v Gibson</i> [2014] WASC 240, [32]
General index entry	<i>Western Australia v Gibson</i>
Table of Cases entry	Western Australia v Gibson [2014] WASC 240

3.5 Government bodies

Ministers, government departments and other government bodies or officials are often parties to legal actions.

3.5.1 Filing issues

In large Tables of Cases it is often preferable to enter such cases under the first distinctive word in the name of the portfolio or Department. See examples, over the page, for how to present such cases in Tables of Cases.

3.5.2 Abbreviations

The full form of the name of a government body or agency is used when it is the first element in a case name, and the abbreviation is used when it appears elsewhere. See example, on the next page.

PARTIES - Government bodies

Filing order

Citation in text	<i>Minister for Immigration and Multicultural and Indigenous Affairs v Al Khafaji</i> (2004) 219 CLR 664
Table of Cases	Immigration and Multicultural and Indigenous Affairs, Minister for v Al Khafaji (2004) 219 CLR 664
Citation in text	<i>Sullivan v Secretary, Department of Defence</i> [2005] FCA 786
Table of Cases	Sullivan v Department of Defence [2005] FCA 786

Abbreviations

The full form of the name is used when it is the first element in the case name, and the abbreviation is used when it appears elsewhere, e.g.:

Australian Securities and Investments Commission v Adler (2002) 168 FLR 253

but

Forge v ASIC (2006) 229 ALR 223

3.6 Joined parties

Sometimes there are two or more joined parties to a case. Only the first plaintiff and first defendant should be cited in general index entries and Table of Cases entries, e.g.:

Citations of parties in the text	Table of Cases entry
<i>Smith & Anor v Brown & Ors ...</i>	Smith v Brown ...
<i>Thompson et al v Booth and Public Service Board</i>	Thompson v Booth ...
<i>Nixon v Slater & Gorman ...</i>	Nixon v Slater & Gorman (a firm) ...

However, there can be exceptions when a case name is well known by the names of parties who are joined. For example, there is a well-known case, often referred to as 'Fitzpatrick and Browne', concerning the right of privilege of the Australian Parliament. This case may be cited in the following ways:

Citation in text	<i>R v Richards; Ex parte Fitzpatrick and Browne</i> [1955] HCA 36
General index entry	<i>Fitzpatrick and Browne Case</i>
Table of Cases entry	R v Richards; Ex parte Fitzpatrick and Browne [1955] HCA 36

3.7 Joined action

Sometimes a case involves more than one action For example:

Ringrow Pty Ltd v BP Australia Pty Ltd; Ultimate Fuel Pty Ltd v BP Australia Pty Ltd; Nader-One Pty Ltd v BP Australia Pty Ltd [2005] HCA 71; 80 AWR 219

In such instances, only the first action may be cited in a Table of Cases, e.g.:

Ringrow Pty Ltd v BP Australia Pty Ltd [2005] HCA 71; 80 AWR 219

Alternatively, each action may be listed separately:

Nader-One Pty Ltd v BP Australia Pty Ltd [2005] HCA 71; 80 AWR 219

Ringrow Pty Ltd v BP Australia Pty Ltd [2005] HCA 71; 80 AWR 219

Ultimate Fuel Pty Ltd v BP Australia Pty Ltd [2005] HCA 71; 80 AWR 219

4. Case names

4.1 Standard citation

We've already seen a number of examples of standard full citations, and noted that conventions may differ between countries. For example, the following table shows how the 'v' in case names is presented and pronounced in Australia, United Kingdom and United States.

Country	Standard citation	Pronunciation in Civil case	Pronunciation in Criminal case
Australia	<i>Gillen v Davis</i> (italic)	Gillen and Davis	Gillen against Davis
UK	<i>Gillen v Davis</i> (roman)	Gillen and Davis	Gillen against Davis
US	<i>Gillen v. Davis</i> (rom + period)	Gillen versus Davis	Gillen versus Davis

4.2 Abbreviated form

Abbreviated case names may use the name of either party, e.g.:

Standard citation	Abbreviated
<i>Mabo v Queensland [No 2]</i> [1992] HCA 23	<i>Mabo Case</i>
<i>R v Archdall; Ex parte Carrigan</i> (1928) 41 CLR 128 (' <i>Archdall Case</i> ')	<i>Archdall Case</i>

In a general index, the popular case name may be used as an index entry. In a Table of Cases the full form from the initial citation should be used. However, abbreviated case names that take the name of the respondent may suggest the need for cross references or inversions. For example, the following entries could be included:

Archdall Case - *see* R v Archdall; Ex parte Carrigan (1928) 41 CLR 128

or

Archdall, R v; Ex parte Carrigan (1928) 41 CLR 128

4.3 Popular form

Popular forms of case names do not necessarily use any of the terms used in the standard citation of the case. For example:

Standard citation	Popular form
<i>Amalgamated Society of Engineers v Adelaide Steamship Co Ltd</i> (1920) 28 CLR 129	<i>Engineers Case</i>
<i>Commonwealth v The State of Tasmania</i> (1983) HCA 21, (1983) 158 CLR 1	<i>Tasmanian Dam Case</i>
<i>Donoghue v Stevenson</i> (1932) UKHL 100	<i>Snail in the Bottle Case</i>
<i>Milirrpum v Nabalco Pty Ltd</i> (1971) (1971) 17 FLR 141	<i>Gove Land Rights Case</i>

A Table of Cases may include cross references from popular case names to the correct form.

In non-legal texts, popular case names are often the only form used. However, guidelines for legal citations are not necessarily followed by authors of non-legal texts. As a rule, index entries for popular case names should follow the style used in the text. If there are inconsistencies in way cases are referred to (e.g. some possibilities are: *Tasmanian Dam case*, *Tasmanian Dam Case*, *Tasmanian Dams case*, or *Tasmanian Dams Case*) consult with the editor/author to establish which is their preferred style.

4.4 Matters and procedural phrases

Some cases involve the court in considering a matter, such as a will, the administration of a company in liquidation, or the estate of a deceased individual.

The titles of such cases begin with the following terms or phrases: 'Re', 'In re', or 'In the matter of'.

'Re' means 'in the matter of', and in Tables of Cases, 'In re' and 'In the matter of' should be replaced with 'Re'.

Some other procedural phrases at the beginning of case names are:

In the Goods of...
In the Marriage of...In
the Will of...

Such phrases should not appear as entry terms in Table of Cases, but should be inverted so that the name of the party becomes the entry term. For example:

Standard citation	Table of Cases inverted entry
<i>Re Canavan</i> (2017) 263 CLR 284	Canavan, Re (2017) 263 CLR 284
<i>In re Gault</i> , 387 U.S. 1 (1967)	Gault, Re , 387 U.S. 1 (1967)
<i>In the Matter of Thurgood</i> [1986] QSC 472	Thurgood, Re [1986] QSC 472
<i>In the Goods of Abdullah</i> (1835) 2 Ky Ec 8	Abdullah, In the Goods of (1835) 2 Ky Ec 8
<i>In the Marriage of Pavey</i> (1976) 10 ALR 259	Pavey, In the Marriage of (1976) 10 ALR 259
<i>In the Will of Knapp</i> (1988)	Knapp, In the Will of (1988) ...
<i>Ex parte McLean</i> (1930) 43 CLR 472	McLean, Ex parte (1930) 43 CLR 472

4.5 Ship name cases

Ship name cases are a particular type of abbreviated case name. See over the page for some examples of how to present them in Tables of Cases.

4.6 Reversals

The use of reversals as well as the forward form of case names in a Table involves an indexer in a lot more work. Fortunately, it is not a common practice. Confirm with your client if they want reversals included. Some examples of reversals are provided on page 22.

CASE NAMES - Ship name cases

Standard citations

Metall und Rohstoff Shipping & Holdings BV v Owners of Bunkers on Board the Ship MV Genco Leader [2005] HCATrans 610 ('*The Genco Leader*')

Overseas Tankship (U.K.) Ltd v. Miller Steamship Co. Pty [1966] UKPC 10 ('*The Wagon Mound (No. 2)*')

Table of Cases entries

The Genco Leader – See *Metall und Rohstoff Shipping & Holdings BV v Owners of Bunkers on Board the Ship MV Genco Leader* [2005] HCATrans 610

Metall und Rohstoff Shipping & Holdings BV v Owners of Bunkers on Board the Ship MV Genco Leader [2005] HCATrans 610

Overseas Tankship (U.K.) Ltd v. Miller Steamship Co. Pty [1966] UKPC 10 ('*The Wagon Mound (No. 2)*')

The Wagon Mound (No. 2) – See *Overseas Tankship (U.K.) Ltd v. Miller Steamship Co. Pty* [1966] UKPC 10

1. CASE NAMES – Reversals

Forward entries	Reversed entries
Kirk v Industrial Court of New South Wales (2010) 239 CLR 531	Industrial Court of New South Wales; Kirk v (2010) 239 CLR 531
Milirrpum v Nabalco Pty Ltd (1971) (1971) 17 FLR 141	Nabalco Pty Ltd; Milirrpum v (1971) (1971) 17 FLR 141
R v Falconer (1990) 171 CLR 30	Falconer; R v (1990) 171 CLR 30

5. Indexing legal cases in general texts: Summary

5.1. Structure, format and presentation

- Be guided by the text
- The names of the parties or the popular or abbreviated case names should be sufficient for the purposes of most general texts
- Seek (or provide) editorial advice if formats of case citations or mentions are inconsistent in the text

5.2 Cross references

- Include where appropriate
- Be guided by the text when deciding whether to direct reader from the full standard case name to the popular or abbreviated case name, or the reverse.

6. Compiling tables of cases

6.1 Locating case citations in the text

In legal texts, the first citation of a case is a full citation, thereafter abbreviations or popular names are used. Usually, only the parties names are given in the main text, and the details of where the decision may be located are given in footnotes.

To save having to read the text too closely, it is a good idea to check the footnotes to cases for 'ibid.'s'. These will indicate the extent of a discussion of a particular case.

See over the page for a brief extract from a legal text, and an example of how the cases cited are located and entered in a Table of Contents.

TABLES OF CASES - Locating Case Citations in the Text

Sample text

... circumstances are illustrated by the case of *R v Van Beelen*,¹ where the pathologist dictated to a police officer matters regarding the hair analysis. [...] In the *Dignan Case*,² the High Court recognised some minimal limits on the delegation of legislative power to the executive, based on the need for the law containing the delegation to fit within a head of legislative power.

¹ (1972) 6 SASR 534

² *Victorian Stevedoring & General Contracting Co Pty Ltd and Meakes v Dignan* (1931) 46 CLR 73 ('*Dignan Case*').

Sample Table of Cases

Dignan Case – see *Victorian Stevedoring & General Contracting Co Pty Ltd v Dignan* (1931) 46 CLR 73

R v Van Beelen (1972) 6 SASR 534 locator

Victorian Stevedoring & General Contracting Co Pty Ltd v Dignan (1931) 46 CLR 73 locator

6.2 Structure, format and presentation: Summary

- Follow publisher's requirements
- Layout – Single column alphabetical list of entries , with hanging indents for carry-over lines
- Letter groups – insert blank line between letter groups
- Typeface – All entries should be in roman type (apart from '*see*' cross references)
- Locators – determine whether page number(s) or paragraph number(s) are to be used
- Inversions – use to achieve desired filing order for matters, etc.
- Reversals – create reverse entries for all forward entries if required
- Cross references – direct from abbreviated or popular case names, or ship names, to full citation details