

## THE IMPORTANCE OF REFERENCING

Whenever you engage in a piece of assessed work, be it a piece of coursework, an exam or a presentation, you will be expected to back up any contentions, opinions or statements of law you make with appropriate authority. This authority could take the form of a textbook, an article in a journal or newspaper, a website, a case or a section of legislation. The reasons why we reference authority are several:

1. It backs up the validity of your arguments and statements of law
2. It allows the reader to determine the validity of the statement made by locating and assessing the authority that is referenced, and
3. Passing off other people's work as your own constitutes plagiarism. Correct referencing will avoid the commission of plagiarism.

It is therefore important that in pieces of coursework<sup>1</sup> sources used are referenced fully, clearly and accurately. Your university lecturers will inform you as to how to reference sources, but there are several different referencing methods. Most business, finance and accounting degrees will use a referencing system called Harvard APA, but the dominant referencing system in law is called OSCOLA (the Oxford Standard for Citation of Legal Authorities) and courseworks submitted for law units must be referenced using OSCOLA. What follows is a brief guide on how to cite sources using OSCOLA, which is now in its 4<sup>th</sup> edition (2010). Students should obtain the full OSCOLA guide for full details. The full guide can be found at <http://www.law.ox.ac.uk/publications/oscola.php>.

## WHEN TO REFERENCE SOURCES

Certain situations are obvious. Many students would understand that the following sources should be referenced:

1. Statements of law – you should always cite the relevant case or legislation (not the textbook where you got it from)
2. Direct quotations – cite the source of the quote, be it from a book, journal, newspaper or other source
3. Certain factual material – such as statistics or the findings of some study or report. Hard facts do not need to be referenced
4. Definitions – if something is defined, you should always cite the source of the definition. This could be a case, an Act, a textbook, a journal, a dictionary etc.

Many good pieces of coursework will contain all of the above, but these will be interspersed with the writer's own words and thoughts (which require no reference). The situation becomes more difficult in relation to material which you have read and researched and has influenced your thinking, but you do not use specifically in your coursework. It is this situation where students exhibit uncertainty. Here are some guidelines:

1. If you have taken the thoughts or opinions of another writer, but expressed them in your own words, then you should still reference the source. However, if the same view is expressed in many texts, then you do not need to cite the source, as it is likely that such information is common knowledge

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<sup>1</sup> The referencing of authority in this document applies mainly to coursework and dissertations – you will not be expected to reference sources as fully in exams or presentations.

2. You do not need to cite concrete facts. For example, if a book tells you that a particular Act came into force on a certain date, then the book does not need to be cited
3. If in doubt, reference the source. It is preferable to reference too many sources than be accused of plagiarism. If the assessor informs you that you have cited too many sources, ask them which ones can be omitted.

## FOOTNOTES

OSCOLA cites sources using footnotes (not endnotes, nor in-text referencing). This is the system used in many textbooks whereby the reference is provided at the bottom the page and is denoted in the main text by a small raised number.<sup>2</sup> Footnotes should usually be placed outside any punctuation.<sup>3</sup>

Footnotes are normally placed at the end of the sentence, although this does not have to be the case. It is perfectly permissible to place footnotes in the middle of a sentence to aid the clarity of your referencing. The following examples demonstrate this:

### Example – Using footnotes

Roach tells us that footnotes are normally placed at the end of the sentence.<sup>1</sup>

However, Roach<sup>2</sup> tells us that footnotes may also be placed in the middle of a sentence.

Roach tells us that footnotes 'are usually placed at the end of a sentence,'<sup>3</sup> although he then goes on to state that this is not always the case.

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<sup>1</sup> Lee Roach, *How to Cite the Law* (3<sup>rd</sup> edn, OUP 2011) 233 (note this is a fictional text).

<sup>2</sup> Lee Roach, *How to Cite the Law* (3<sup>rd</sup> edn, OUP 2011) 233 ('ibid' could be used here).

<sup>3</sup> Lee Roach, *How to Cite the Law* (3<sup>rd</sup> edn, OUP 2011) 233 ('ibid' could also be used here).

## USING 'IBID'

A page may have a significant number of footnotes. In order to avoid repeating a source, if an author is referencing from the same source as *the immediately preceding footnote*, then instead of stating the full source again, he can simply state 'ibid.' Ibid is short for 'ibidem' which means 'in the very same place.' The author can continue to use ibid until such time as a new source is cited. This is especially useful if a number of consecutive footnotes are referencing from the same source (for example, an Act of Parliament). The following provides an example of the correct use of ibid.

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<sup>2</sup> This is a footnote.

<sup>3</sup> The footnote number appears outside after the full stop.

### Example – The use of *ibid*

It is well established that the Appellate Committee of the House of Lords will not overrule a previous decision simply because it is 'wrong'.<sup>1</sup> So, when will the House of Lords overrule itself? Should the House only be allowed to overrule itself in set circumstances or should it have full discretion? Authority exists for both positions. In *Vestey v Inland Revenue Commissioners*,<sup>2</sup> Lord Wilberforce stated that the House's power to overrule itself should be 'governed by stated principles'.<sup>3</sup> Conversely, in *The Hannah Blumenthal*,<sup>4</sup> Lord Roskill stated that instances when the House can overrule itself 'cannot be categorized'.<sup>5</sup> Currently, there are no set criteria in place establishing when the House will exercise the power granted to them by the Practice Statement, but it has been argued that an analysis of the cases where the power has been used reveals some common principles.<sup>6</sup>

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<sup>1</sup> *R v National Insurance Commissioner, ex parte Hudson* [1972] AC 944 (HL) 966.

<sup>2</sup> [1980] AC 1148 (HL).

<sup>3</sup> *ibid* 1150.

<sup>4</sup> [1983] 1 AC 845 (HL).

<sup>5</sup> *ibid* 922.

<sup>6</sup> See e.g. Sir Rupert Cross, *Precedent in English Law* (Jim Harris ed, 4<sup>th</sup> edn, OUP 1991) 135-43.

Note that the word '*ibid*' should not be italicized and a lower case '*i*' should be used.

## QUOTATIONS

Quotations should be faithful to the original. Quotes of 3 lines or less should be within the text and quoted with single quotation marks. Quotes within those quotes should use double quotation marks. Quotations longer than 3 lines in length should be placed on a new line and indented with no quotation marks.

Quotations should not be italicised, except where the quote itself is italicised. For some reason, students feel that quotes need to be italicized, but it is incorrect to do so.

## CROSS-CITATION AND CROSS-REFERENCING

### *Cross-citation*

What if you want to cite in one footnote a source you have cited in another footnote? Do you have to cite the source fully or can you simply refer to the other footnote?

Referring to a previous (or future) footnote is known as cross-citation. Cross-citation involves work for the reader and should only be done when the work is rewarding (I would advise that you never cross-

cite and simply write the source out in full). Do not cross-cite to a footnote in a different chapter. Usually, it is best to cite the full source.

If you do intend to cross-cite, then briefly identify the case, text or other source and then specify the note where it can be found, as the following examples demonstrate

### Example – Cross-citation

If you wish to cite, in footnote 24, a book/article that you cited in footnote 12, you would put:

<sup>24</sup> Roach (n 12) 245.

The same is true of case law, so if, in footnote 37, you wanted to cite a case that you cited in footnote 3, you would put:

<sup>37</sup>Donoghue (n 3) 600 (Lord Tomlin).

Do not use *op cit* or *loc cit*. You will see these methods of cross-citation used in texts and journals, but you should not use them.

## *Cross-referencing*

Cross-referencing involves referring the reader to another portion of the main text (not a footnote). You should not cross-reference when you could simply and briefly reiterate the point made earlier.

### Example – Cross-referencing

Cross-references should be easy to locate – simply stating ‘see above’ is useless. A good cross-reference takes the reader straight to the relevant portion of the text, such as:

See second paragraph on p 6

See text to n 34

Do not use *supra*, *infra*, *ante* or *contra*. You will see these methods of cross-referencing used in texts and journals, but you should not use them.

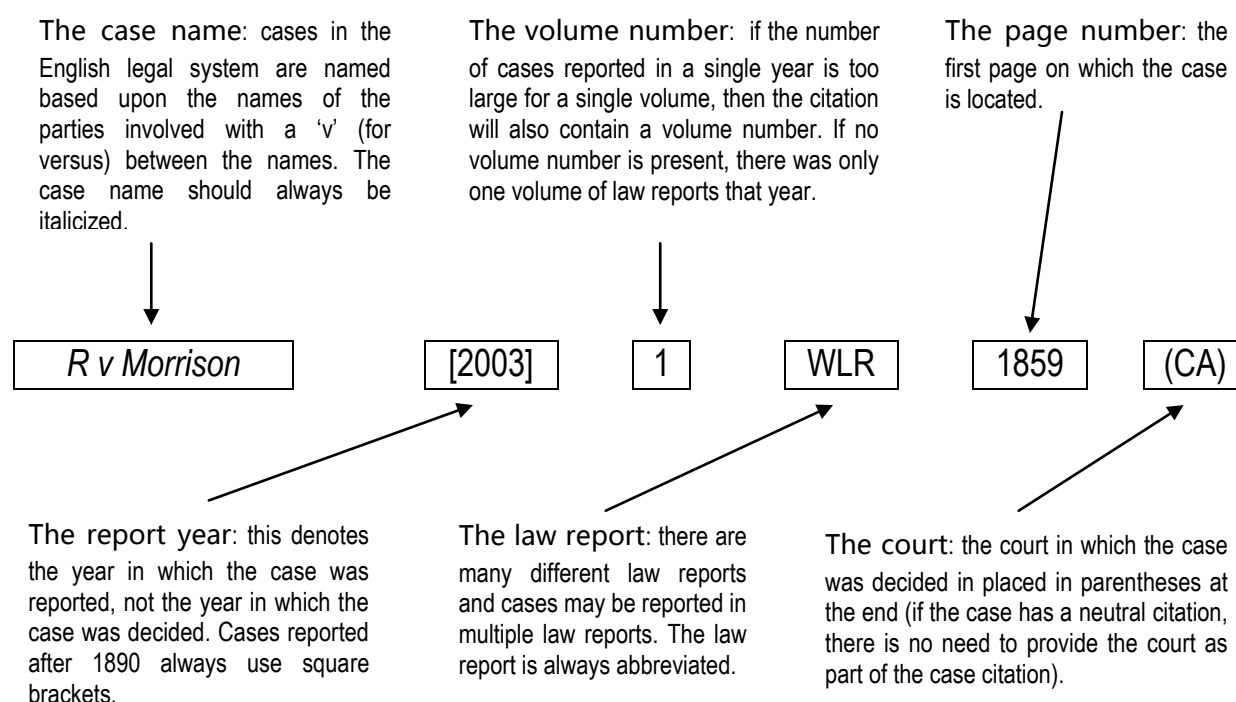
## CASE LAW

Cases provide one of the principal sources of English law, but the sheer bulk of case law that exists can be daunting. How does a student go about finding a particular case report? To enable students,

practitioners and other interested parties to locate a case, all reported cases are given a case citation, and this citation refers to a law report where the case is published (often, cases are published in multiple law reports and so may have several case citations). To make matters more complex, domestic cases, EU cases and cases of the European Court of Human Rights are all cited differently.

## *Domestic case law*

The following provides an example of a domestic case name and its case citation. It can be seen that the case name and its citation consists of six elements:



Regarding the name of the court, the name of the court is always abbreviated, and the principal abbreviations are as follows:

- HL – Appellate Committee of the House of Lords
- CA – Court of Appeal
- Ch – Chancery Division of the High Court
- QB – Queen's Bench Division of the High Court (if the monarch is male, this division is known as the King's Bench Division (KB))
- Fam – Family Division of the High Court
- Comm – Commercial Court
- PC – Judicial Committee of the Privy Council
- EAT – Employment Appeal Tribunal

Cases may be cited in several different reports. If this occurs, there is no need to cite all the reports where the case is reported – you only need cite the most authoritative. The order of authority is as follows:

1. Official Law Reports (e.g. AC, QBD, Ch, Fam etc)

2. Weekly Law Reports (WLR)
3. All England Law Reports (All ER)
4. Specialist reports (e.g. Butterworths Company Law Cases (BCLC)).

Both the case citation and the case name go in the footnote, unless the name is mentioned in the text in which case only the citation need be provided in the footnote. After the citation, the court deciding the case should be placed in round brackets, unless the case has a neutral citation (in which case the neutral citation will indicate the court), or unless the case was decided before 1865. The following provides examples of cases mentioned in the text and cases not mentioned in the text.

### Example – Citing case law

The House of Lords has acknowledged that the courts may have regard to Hansard when interpreting legislation.<sup>1</sup>

The case of *Pepper v Hart*<sup>2</sup> established that the courts may have regard to Hansard when interpreting legislation.

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<sup>1</sup> *Pepper v Hart* [1993] AC 593 (HL).

<sup>2</sup> [1993] AC 593 (HL).

Using the above example, if you quoted from *Pepper v Hart* and the quote was from page 602, the footnote would cite the source thus.<sup>4</sup> If you name the judge in the text, there is no need to repeat it in the footnote. If you do not name the judge in the text, you should state the judge's name in the footnote in parentheses following the page number of the quote. Note 'per' is no longer used. The following examples demonstrate this:

### Example – Quoting from a judgment

In *Royal College of Nursing v DHSS*,<sup>1</sup> Lord Diplock described the drafting of s 1(1) of the Abortion Act 1967 as being 'far from elegant.'<sup>2</sup>

In *Royal College of Nursing v DHSS*,<sup>3</sup> the House of Lords described the drafting of s 1(1) of the Abortion Act 1967 as being 'far from elegant.'<sup>4</sup>

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<sup>1</sup> [1981] AC 800 (HL).

<sup>2</sup> *ibid* 827.

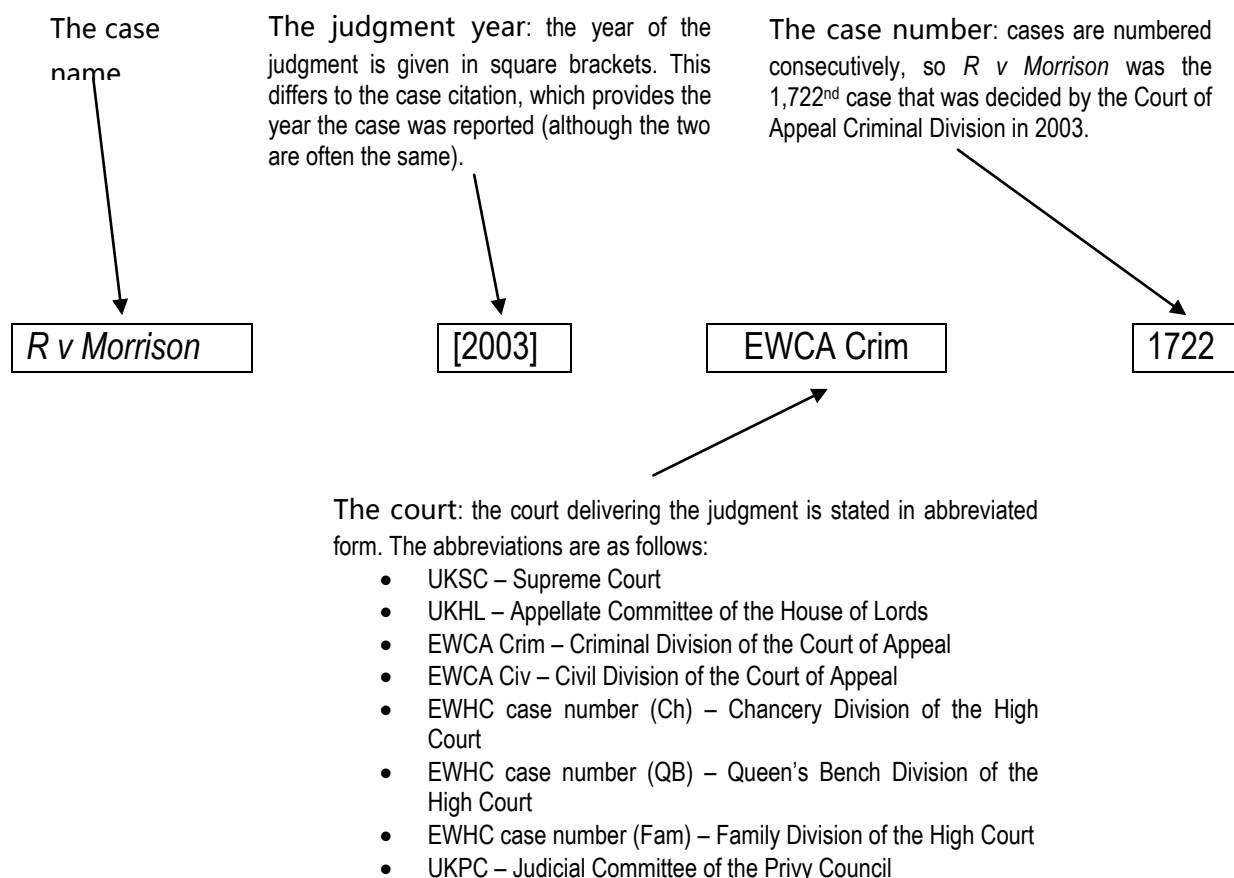
<sup>3</sup> [1981] AC 800 (HL).

<sup>4</sup> *ibid* 827 (Lord Diplock).

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<sup>4</sup> [1993] AC 593 (HL) 602.

Since 2001, many cases, in addition to having a case citation, will also have what is called a neutral citation. The case of *R v Morrison* that we discussed above, in addition to having a case citation, also has a neutral citation, which consists of three elements.



If a case has both a neutral citation and a case citation, cite the neutral citation first, followed by the case citation. If you are quoting or referencing from a particular part of a judgment, then quote the paragraph number, not the page number (if a case has no neutral citation, then the page number should be referenced). We indicate that a number is a paragraph number by placing it in square brackets.

#### Example – Quoting from a case with a neutral citation

In *R v Morrison*,<sup>1</sup> Lord Woolf CJ stated that he regarded 'the manner in which the judge exercised his discretion as being perfectly appropriate.'<sup>2</sup>

<sup>1</sup> [2003] EWCA Crim 1722, [2003] 1 WLR 1859.

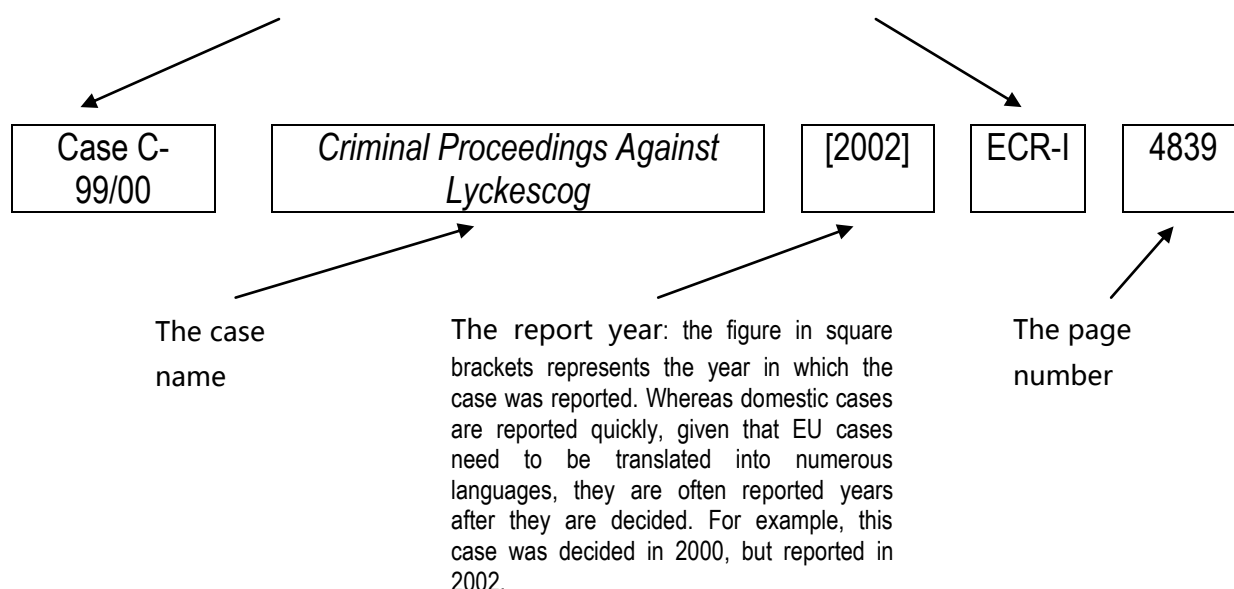
<sup>2</sup> *ibid* [13].

## *Cases of the Court of the European Union*

Cases of the Court of Justice and General Court (collectively both courts are known as the Court of the European Union) are cited differently to domestic cases. The following indicates the elements of a EU case.

The serial number: the serial number consists of a letter indicating in which court the case was heard. The letter 'C' indicates that the case was heard in the Court of Justice, whereas the letter 'T' is used for decisions of the General Court. The subsequent numbers provide the case number and the year the case was reported/referred to the court in question. Accordingly, this case was the 99<sup>th</sup> case reported to the Court of Justice in 2000.

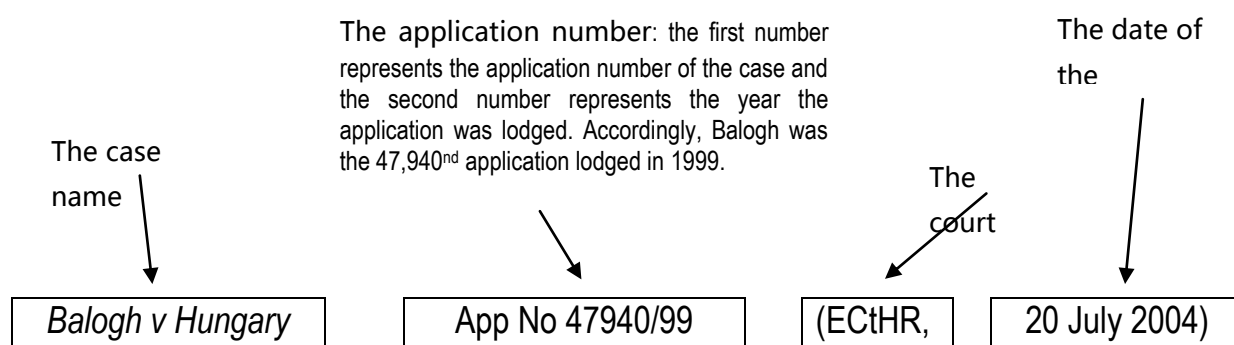
The law report: decisions of the European courts are reported in the Reports of Cases Before the Court, usually referred to as the European Court Reports (ECR). Since 1990, the Reports have been split into two parts denoted by a 'I' or 'II' following the letters 'ECR.' Part I covers the Court of Justice and Part II covers the General Court. Although the ECR provides the official law reports, EU cases are also reported in other law reports (perhaps the most notable being the Common Market Law Reports (CMLR)).



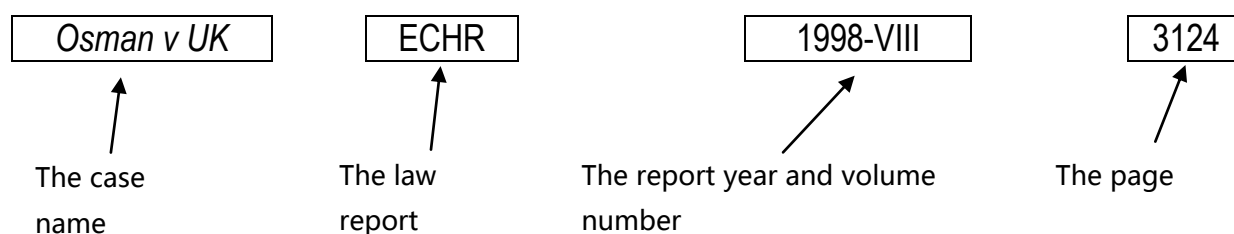
## *European Court of Human Rights Cases*

Cases of the European Court of Human Rights (ECtHR) are cited differently from domestic cases and EU cases. Prior to 1996, the official law reports of the ECtHR were known as Series A, but they are no longer used. Today, the two most prominent law reports for the ECtHR are the Reports of Judgments and Decisions, and the European Human Rights Reports. Feel free to cite either, but remain consistent (i.e. use one or the other throughout your work). Note that application numbers need only be provided in the case of unreported judgments, which would be cited thus.

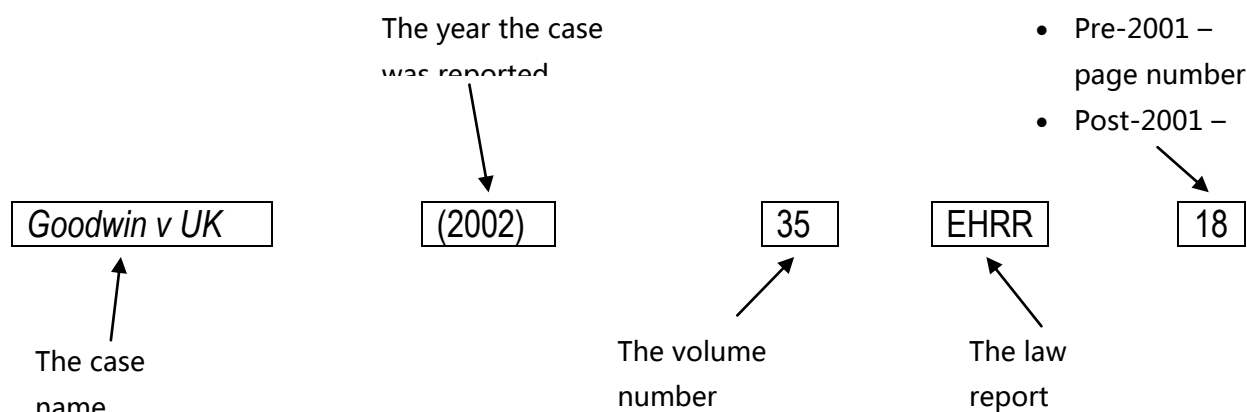




Reported judgments are cited differently. Since 1998, the official law report for decisions of the ECtHR is known as the Reports of Judgments and Decisions (abbreviated to ECHR), and cases cited from the Reports of Judgments and decisions should be cited thus:



In addition to the official Reports of Judgments and Decisions, there are also commercially available law reports, the most notable of which being the European Human Rights Reports (EHRR). Cases cited from the EHRR should be cited thus:



## LEGISLATION

Acts should be cited using their short title with the year at the end. Students often omit the year – you should never do this. The following provides examples of INCORRECT usage of legislation.

### Example – Incorrect usage of legislation

Registered companies are regulated by the Companies Act.

In 1998, the Human Rights Act was passed.

In both cases, the student has neglected to state the year. You state the year, even if you previously refer to when the Act was passed (as in the second example).

When discussing legislation in the main body of the text, you can either state the section number first, or after the name of the Act. The following examples demonstrate both approaches.

### Example – Stating section numbers

The offence of fraudulent trading can be found in s 993 of the Companies Act 2006.

The offence of fraudulent trading can be found in the Companies Act 2006, s 993.

When citing legislation, there is no need to cite anything in a footnote if the main text contains all the relevant information. If, however, information is missing (e.g. section numbers) from the main text, these should be mentioned in the footnote. See the following example.

### Example – Stating section numbers

The offence of fraudulent trading can be found in s 993 of the Companies Act 2006. This should not be confused with the civil wrong of fraudulent trading found in the Insolvency Act 1986.<sup>1</sup>

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<sup>1</sup> Insolvency Act 1986, s 213.

As can be seen in the example above, when citing legislation in a footnote, the legislation title always precedes the section number.

When citing portions of statutes, the following abbreviations should be used, unless the word is at the beginning of a sentence when the full word should be used:

- 'Section' should be abbreviated to 's'
- 'Sections' (when citing more than one section) should be abbreviated to 'ss'
- 'Paragraph' should be abbreviated to 'para'<sup>5</sup>
- 'Part' should be abbreviated to 'Pt'
- 'Parts' should be abbreviated to 'Pts'

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<sup>5</sup> This only applies to the citation of legislation. When citing paragraph numbers from other sources (e.g. cases or official reports), the paragraph number is usually denoted by being placed in square brackets.

- f. 'Schedule' should be abbreviated to 'Sch'
- g. 'Regulation' should be abbreviated to 'reg'
- h. 'Article' should be abbreviated to 'art' if referring to domestic legislation. When referring to European legislation (e.g. EU treaties, regulations or directives, the European Convention on Human Rights), you should use 'Art.'

### *Subordinate legislation*

Subordinate legislation is cited the same way except that the serial number of the legislation is also included in the footnote when cited for the first time. There are many different types of subordinate legislation, but the most common form is the statutory instrument.

#### Example – Citing statutory instruments

Statute provides promoters of companies with a set of model articles that they can register if they do not wish to draft their own articles.<sup>1</sup>

Consumers are provided with a significant amount of protection following the passing of the Consumer Protection from Unfair Trading Regulations 2008.<sup>2</sup>

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<sup>1</sup> Companies (Model Articles) Regulations 2008, SI 2008/3229.

<sup>2</sup> SI 2008/1277.

Note that statutory instruments do not consist of sections, but consist of regulations (reg).

## BOOKS

Books should be cited using the following formula:

Author, *Title of Text* (edition, publisher, year of publication) page number.

So, for example:

Lee Roach, *Card & James' Business Law for Business, Accounting & Finance Students* (2<sup>nd</sup> edn, OUP 2012) 356.

Note that if a text is a first edition, you need not state the edition number.

## PUBLISHED JOURNAL ARTICLES

Published journal articles should be cited using the following formula:

Author, 'Title of Article' (Year) volume of journal, journal abbreviation, first page of article, quoted page (if relevant).

The title of the journal should conform to the accepted abbreviation. So, for example:

Lee Roach, 'An Equitable Solution for Non-Executive Directors?' (2006) 17 ICCLR 117, 119.

## NEWSPAPER ARTICLES

Newspaper articles should be cited using the following formula:

Author, 'Title' *Newspaper* (place of publication, date) page number

So, for example:

Jane Croft, 'Supreme Court Warns on Quality' *Financial Times* (London, 1 July 2010) 3.

## INTERNET SOURCES

If a hard copy of the Internet source is available, it is usually easier to cite the hard copy. Therefore, if you access articles via Westlaw or LexisNexis, you should cite them as if you were citing the hard copy (page numbers are provided, so you have all the information you need.)

Otherwise, Internet sources should be cited using the following formula:

Author, 'Title,' (Type of document – e.g. lecture, conference paper (if relevant), Date of issue (if relevant)) <Web address> Date of access.

So, for example (this example is fictional):

Lee Roach, 'The UK Stewardship Code' (Paper presented at the Annual Conference of the Society of Legal Scholars 2011) <<http://www.sls.ac.uk/LeeRoach.htm>> accessed 15<sup>th</sup> September 2011.