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Objectives

What is case law?

Structure of a case

Law reports

Case citation

Finding cases: full citation

Finding cases: incomplete citation

Finding cases by subject

Updating cases

Objectives

By the end of this session, students will be able to:

- Recognise the elements of a reported case
- Recognise the elements of an unreported case
- Recognise the elements of a media neutral citation
- Identify the types of law reports available
- Interpret a case citation
- Locate a case using electronic resources
- Determine if a case is still good law

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What is Case Law?

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- **Case Law** is the general term for the legal principles developed by judges to determine legal disputes.
- **Case Law** is recorded in *judicial decisions* or *judgments*. Only decisions of importance (e.g. cases that clarify/settle a principle of law heard in the superior courts, Supreme, Federal & High Court) are recorded in *law reports*.
- **Case Law** is also known in Australia as *common law* or *judge made law*.
- **Case Law** is valuable as *precedents* but constitute only a small number of cases heard each year.
- Some [District Court \(NSW\)](#) and [Local Court judgments](#) are available to the public.
- In civil cases, the judgment is available only to the parties involved.
- A new series of reports District Court Law Reports (NSW) is available from 2001, accessible via [Legal Online](#).

[Structure of a case](#) ►

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Structure of a Case

Cases follow a standardised layout as seen in the annotated case below.

(2001) 208 CLR 1
FirstPoint Summary

Judicial history of the case ———

[HIGH COURT OF AUSTRALIA] ——— **Name of Court**
THE COMMONWEALTH OF AUSTRALIA
 RESPONDENT, APPELLANT,
 AND
YARMIRR AND OTHERS
 APPLICANTS, RESPONDENTS.
YARMIRR AND OTHERS
 APPLICANTS, APPELLANTS,
 AND
THE NORTHERN TERRITORY OF AUSTRALIA AND OTHERS
 RESPONDENTS, RESPONDENTS. [2001] HCA 56

Case Name
Names of the parties
Commonwealth v Yarmirr

Judges who heard the case
 Gleeson CJ,
 Gaudron,
 McHugh,
 Gummow,
 Kirby,
 Hayne and
 Callinan JJ

ON APPEAL FROM THE FEDERAL COURT OF AUSTRALIA
 H C OF A
 2001

Headnote:
Summary of the case

Catchwords:
keywords indicate the subject matter

Date of decision
 Feb 6-9,
 Oct 11
 2001

208 CLR 1

Aboriginals — Native title to waters — Native title rights and interests in relation to sea and sea-bed — Whether recognised by common law — Whether operation of common law extends beyond low-water mark — Whether exclusive native title rights and interests inconsistent with public rights to navigate and to fish and right of innocent passage — Native Title Act 1993 (Cth), ss 6, 223(1)(c).

Section 223(1) of the *Native Title Act 1993 (Cth)* provided that the expression "native title" or "native title rights and interests" means the communal, group or individual rights and interests of Aboriginal peoples or Torres Strait Islanders in relation to land or waters, where "(a) the rights and interests are possessed under the traditional laws acknowledged, and the traditional customs observed, by the Aboriginal peoples or Torres Strait Islanders, and (b) the Aboriginal

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Law reports: authorised reports

- Authorised law reports are cases that have been approved by the judge before publishing. They contain decisions.
- Cases are often reported in more than one law report series; citing the authorised report is preferable, if available.
- Cases reported in an authorised series *must* be cited in court rather than relying on printouts from databases such as AustLII.

Authorised Australian law reports available electronically from UOW Library

Authorised Report Series	Legal Online	LexisNexis AU
Commonwealth Law Reports (CLR) Cases from: High Court of	Vol. 1 1903+	-

Australia		
New South Wales Law Reports (NSWLR) Cases from: Supreme Court of NSW	1971+	-
Federal Court Reports (FCR) Cases from: Federal Court of Australia	1984+	-
Victorian Reports Cases from: Supreme Court of Victoria	-	1957+

[Specialist Reports](#) ►

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Law Reports: authorised specialist reports

- Authorised specialist reports cover only one area of law.
- Authorised specialist reports are accessible electronically; for example:

Authorised specialist reports	Legal Online	LexisNexis AU	IntelliConnect
Australian Criminal Reports Cases from: High Court; Federal Court; Supreme Courts (States & Territories)	Vol. 1 1979+	-	-
Australian Tax Cases Cases from: Administrative			

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Appeals Tribunal (Federal & State); Federal State Courts	-	-	1969+
Australian Company Law Cases Cases from: Supreme Court of NSW; Federal Court	-	-	1971+
Intellectual Property Reports Cases from: Australian & International Superior Courts	-	1983+	-

- More specialist reports exist; however, they are beyond the scope of this tutorial.

[Unreported cases](#) ►

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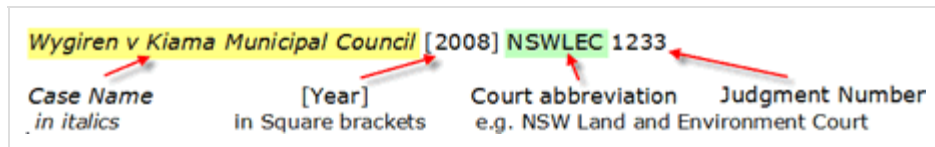
Unreported Cases

- Many cases are not published in a series of law reports. You may find out about these cases in newspapers, journal articles, electronic databases or in a court hearing itself.
- A Court cannot rely upon unreported judgments unless a barrister has authenticated a note or report of the judgment.¹
- The Library has access to some unreported cases via Legal Online, LexisNexis AU, Lexis.com, AustLII, Lawlink and Westlaw.
- Unreported cases are recognised by their use of media neutral citation.

Media neutral citation

- Media neutral citation or medium neutral citation is a citation that
 - is assigned by the court in which the case is heard
 - focuses on the court rather than the media of print or electronic format
- Only use media neutral citation for *unreported* judgments.

- Example:



- For more details about citations, please consult the [Australian Guide to Legal Citation](#) (3rd ed, 2010) (PDF opens in a new window) 37 [2]
- Court abbreviations used in medium neutral citation are found in the tables of abbreviations of the following databases:
 - Legal Online > Firstpoint > Help > Firstpoint Table of Abbreviations
 - LexisNexis AU > Cases tab > Abbreviations/Subject List

¹ Enid Campbell, Lee Poh-York and Joyce Tooher, *Legal Research ; Materials and Methods*, (4th ed, 1996) 97.

[Reported case citation](#) ►

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Reported case citation

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The standard form of case citation is:

- The parties names e.g. Johnson v Jones
 - When spoken the 'v' is pronounced 'and' in civil actions and 'against' in criminal cases
- The volume of the report series
- The name of the report series in abbreviated form
- The page number where the case begins
- Example citation of the Yorta Yorta case:

Members of the Yorta Yorta Aboriginal Community v Victoria and others (2002) 194 ALR 538

Above example citation explained: it is a 2002 case reported in volume 194 of the Australian Law Reports at page 538.

[Style and method of citation](#) ►

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Style and method of citation

The Law Faculty at UOW follows the method of citation outlined in the [Australian Guide to Legal Citation](#) (3rd ed, 2010) (PDF opens in a new window) 37 [2]

[Case citation: round brackets and square brackets](#) ►

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Case citation: round brackets and square brackets

- Some series of reports have volumes individually numbered. The volume number is essential to finding the report.

- The year is **non essential** therefore included in **round brackets**.

- Example citation from the *Commonwealth Law Reports*:

Mabo v Queensland (No. 2) (1992) 175 CLR 1

- Other reporting series are only distinguishable by their year of publication; they do not have unique volume numbers.

- To find the report, the year is **essential** therefore included in **square brackets**.

- Example citation from *Victorian Reports*:

R v Moffatt [1998] 2 VR 229

- Explanation of above citation: *R v Moffatt* is a case reported at page 229 of volume 2 of the Victorian Reports for 1998. In this criminal case, 'R' is pronounced "the Crown".

For case citation help, consult the [Australian Guide to Legal Citation](#) (3rd ed, 2010) (PDF opens in a new window) 47 [2.2]

[Case citation: law report abbreviations](#) ►

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Case citation: Law Report abbreviations

- Abbreviations for a law report consist of the initial letters of the words in the title.
- To interpret other case citations, refer to 285-315 in the print version of the *Australian Guide to Legal Citation* (3rd ed, 2010)
- For other sources, see [abbreviations](#).

[Finding cases: full citation](#) ►

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Finding Cases by Full Citation

Example case: *Commonwealth v Yarmirr* (2001) 208 CLR 1

Step 1: Find out what the abbreviation CLR represents

- Check the abbreviations list in the Appendix of the print version of the *Australian Guide to Legal Citation* 285-315

CCPA	Reports of Court of Customs and Patent Appeals	USA	1910–82
CCR	County Court Reports	Australia (Vic)	1962–72
CEC	European Community Cases	EU	1989–
Ch	Law Reports, Chancery Division	UK	1891–
Ch Cas	Cases in Chancery	UK	1660–97
Ch Cas in Ch	Choyce Cases in Chancery	UK	1557–1606
Ch Ch	Chancery Chambers Reports, Ontario	Canada	1858–72
Char Cha Cas	Charley's Chamber Cases	UK	1875–76
Char Pr Cas	Charley's New Practice Reports	UK	1875–78
ChD	Law Reports, Chancery Division	UK	1875–90
Chit	Chitty's Practice Reports, King's Bench	UK	1770–97, 1807–22
CILC	Commonwealth International Law Cases	International	1974–
Cl & F	Clark and Finnelly's Reports, House of Lords	UK	1831–46
CL (Q)	Crown Lands Law Reports, Queensland Land Court	Australia (Qld)	1859–1973
Cl Home	Home's Decisions, Court of Session	Scotland	1735–44
CLR	Commonwealth Law Reports	Australia	1903–
CLR	Construction Law Reports	Canada	1983–92

Looking at the options, Canada can be eliminated because the

date of the case is 2001 which is after *Construction Law Reports* ceased publication. Hence, CLR here refers to *Commonwealth Law Reports*.

Step 2: Look for the title of the law report series

- For our example, use Summon to search the Library collection and look up *Commonwealth Law Reports*
Tip: try the *Advanced Search* using the *Title* field
- Click on the title "Commonwealth law reports" to open full text

Commonwealth law reports



Corporate Author: LBC Information Services; Australia. High Court; Law Book Company
Subjects: Law reports, digests, etc

eJournal A complete collection of authorised decisions from the High Court of Australia.

Availability: Full Text Online

Step 3: Obtain the full text of the case

- Watch the demonstration video below to learn how to obtain the full text of the case, electronically:



[Finding Commonwealth Law Reports \[PDF\]](#)

- The print copy is held in the Law Library (Ground Floor) - call number: KH/41/AUS (select Vol 208, page 1)

[Finding cases: incomplete citation](#) ►

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Finding cases: incomplete citation

Step 1: Use a case citator to identify the law report series

- Case citators locate the full citation of a case.
- Case citators locate citations to alternative law report series in which a case has been reported
- Commonly used case citators for Australian cases: Legal Online: FirstPoint, and LexisNexis AU: CaseBase - Always check *both* case citators!

Demonstration:



Find the case *Coco v Queen* using Legal Online: FirstPoint (select tutorial #5 Find a case by case name) [SWF 585KB]

[Using Legal Online: FirstPoint](#) ►

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Using Legal Online: FirstPoint to obtain the full text of a case

Activity 1

1. Open the [Cases Databases web page](#) (Opens in a new window)
2. Select **Legal Online**
3. Enter your UOW University email username and password
4. Click on **Cases** in the middle column to open the search window
5. In the **Case Citation** field, enter: *208 CLR 1*
6. Answer the following questions:
 - In which court was the case heard?
 - What is the date of the decision?
 - Who were the judges who heard the case?

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Finding cases by subject

Step 1: Use a Law database (e.g. LexisNexis AU: CaseBase)

Choose your search terms carefully to retrieve most relevant documents. If unsure, refer to the [Planning your Research module](#) of this tutorial.

Example: to find cases on the subject of *native title claims*, useful terms and phrases include:

- native title
- claim!

Note: the truncation symbol for LexisNexis AU is !

Demonstration:



[Finding cases on a subject](#) [PDF]

- For more Law databases, consult the [Case Law](#)

Quick Reference Guide.

[Updating cases](#) ►

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Updating cases / noting up a case

To ensure the cases are still 'good' law (i.e. not overruled by subsequent cases) ...

- Research the **judicial history** of a case to ascertain whether the case has been overruled by subsequent cases or it is still being used.
- Checking a case's judicial history may also alert you to more recent judgments on your topic. This task is usually referred to as **noting up**.
- Noting up Australian cases is done by using a case citator. Common Australian case citators are Legal Online: FirstPoint, and LexisNexis AU: CaseBase
- The most noteworthy annotations in a case citator are: **disapproved**, **overruled**, **applied** and **followed**.
- A detailed description of these terms can be found:
Legal Online: -> FirstPoint -> Help -> Status Symbols Guide
LexisNexis AU: -> Help -> CaseBase Court Annotations
- Annotations differ between databases.

Example of the judicial history of the case *Yorta Yorta v Victoria*:

Yorta Yorta v Victoria ▶

Citation [214 CLR 422 \[PDF\]](#), 77 ALJR 356, 194 ALR 538, [\[2002\] HCA 58](#)
 Court High Court of Australia (AUS)
 Judges Gleeson, Gaudron, McHugh, Gummow, Kirby, Hayne, Callinan
 Judgment Date 12/12/2002

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Distinguished by

- [De Rose v South Australia](#) (2003) 133 FCR 325 [\[PDF\]](#), [\[2003\] FCAFC 286](#), [\[2005\] ALMD 1498](#), [\[2005\] ALMD 1500](#)

Considered by

- [Sampi v Western Australia](#) [\[2005\] FCA 777](#)
 - [Northern Territory of Australia v Doepel \(No 2\)](#) [\[2004\] FCA 46](#)

Applied by

- [De Rose v State of South Australia \(No 2\)](#) [\[2005\] FCAFC 110](#)
 - [Gale v Minister for Land and Water Conservation for the State of New South Wales](#) [\[2004\] FCA 374](#)
 - [The Lardil, Kaiadilt, Yangkaal and Gangalidda Peoples v Queensland](#) [\[2004\] FCA 298](#)
 - [Daniel v Western Australia](#) [\[2003\] FCA 666](#)
 - [Neowarra v Western Australia](#) [\[2003\] FCA 1402](#)

Followed by

- [Northern Territory v Doepel](#) (2003) 133 FCR 112 [\[PDF\]](#), 203 ALR 385, [\[2003\] FCA 1384](#), [\[2004\] ALMD 1249](#)

This case has not been overruled and is still good law.

[Image used by permission of *Legal Online*™.]

Using Legal Online: [FirstPoint](#) ▶

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Using Legal Online: FirstPoint

Activity 2

In this exercise, we will practise updating the Yorta Yorta case.

1. Access *Legal Online: FirstPoint* via the Library's Resources for Assignments - [Law guide](#)
2. Locate the following case using the citation as you did in Activity 1: **Members of the Yorta Yorta Aboriginal Community v Victoria and others (2002) 214 CLR 422.**
3. Are there any alternate citations for the case? (Yes or No?)
4. Has the case been **Applied** in other decisions? (Yes or No?)

This completes the Finding Case law module.

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