

Legal Writing



Lisa Webley

CHAPTER 6

CORRECT REFERENCING IN ESSAYS, PROBLEM QUESTION ANSWERS AND DISSERTATIONS

Many students get very concerned about being found guilty of an assessment offence such as plagiarism, as academics are increasingly preoccupied with the problem of plagiarism and are stressing the importance of correct referencing in legal writing. Referencing can be a confusing business to begin with, but there are some simple rules that may help you with your writing and referencing, to make sure you steer clear of trouble. Put simply, referencing is giving credit to the author who had the idea or wrote the words that you are making use of in your essay or problem question answer.

WHAT IS REFERENCING?

It is attributing the work that belongs to someone else and which you are using in your essays and presentations.

It should be possible for someone else to look up the other person's work and read it in its original source after looking at your references.

If you do not reference properly you may either be found to have undertaken 'poor scholarship' which will lose you considerable marks, or you may be found guilty of plagiarism which has serious penalties attached.

Many of the points that you make in your writing will be points made previously by other people. That is the nature of undergraduate study and it shows that you have carried out research, for which you will receive credit. However, when you use someone else's idea or you use their words, you must also give that person credit by stating that the idea or words were theirs first. You may be found guilty of poor scholarship if you do not cite all your sources, for which you will lose marks, or you may be found guilty of plagiarism if it is considered that you set out to pretend that the idea or words were yours. Plagiarism can lead to very serious penalties, including expulsion from your course. A law school may be under a duty to report your offence to the Law Society of England and Wales and the General Council of the Bar, which may make it difficult for you to become a member of the legal profession in later life. It is consequently important that you cite all your sources fully and accurately. In addition, good referencing may gain you marks.

WHAT IS PLAGIARISM?

Plagiarism is taking (some would say *stealing*) others words OR ideas without stating whose words or ideas they are and where they came from.

It is not just a case of failing to put quotation marks round someone else's words.

It includes taking others' ideas, ones that you have not come up with yourself, and then not stating that they belong to someone else.

Paraphrasing others' words is only acceptable if you attribute those ideas to the person who thought of them.

In other words, you should cite the other person's work if:

- you are quoting their words;
- you are paraphrasing their words by using their ideas but not their exact words (any ideas that you have not come up with yourself).

To be clear, plagiarism is taking someone else's words or someone else's ideas without stating the sources from which you got them. This would include taking a chunk of text from a book or an electronic source including the internet, and putting it in your essay without putting quotation marks around the words and without putting a footnote stating the source of those words. It would include putting someone else's words into your own words (called paraphrasing) and not putting a footnote stating from where these ideas originated. Students often say that they find it hard to know when to put a footnote to another's source. The rule of thumb should be that you put a footnote whenever you have not come up with the idea you are discussing or the words you are using yourself. This means that most paragraphs will contain a number of footnotes to others' work, although it is likely that the first sentence and last sentences are your own original work and will thus not need to be footnoted.

HOW TO REFERENCE

There are different ways of citing work; however, there are certain key pieces of information that a full reference must contain.

Adopt a consistent style and make sure you include all the relevant information.

Learn to use footnotes or endnotes if you have not used them before.¹

¹ A footnote generally appears at the bottom of the page as this one does and contains all the information necessary for the reader to find the original source. Word processing programmes such as Word have an 'add footnote' function in the 'insert' menu on the toolbar.

There are some general rules about how you should display case names, statutory references and quotes from texts. Many of the rules are not hard or fast, but you do need to adopt a consistent style throughout your answer. Try to find a style that suits you, make sure it conforms to any guidelines you have been given by your tutors, and then stick to it. The general rules are set out below.

HOW TO REFERENCE BOOKS

Author surname, initials, *Title of the Book*, edition (Place of publication: Publisher, year of publication) page number if relevant.

For example:

Webley, LC, *Legal Writing* (London: Cavendish Publishing, 2005).

Or:

Webley, LC (2005) *Legal Writing* (London: Cavendish Publishing)

A full reference for a book will include the name of the author, the title of the book, the edition of the book (if there is one), the place of publication of the book, the name of the publisher and the year of publication. This is enough information for the bibliography, but you will also need to provide a page reference for the source of your information in a footnote or endnote.

HOW TO REFERENCE JOURNAL ARTICLES

Author surname, initials, 'Title of the article' (year) volume number *Journal title* page reference.

For example:

Webley, LC, 'Pro bono and young solicitors: views from the front line' (2000) Vol 3(2) *Legal Ethics* 152–68.

Or:

Webley, LC (2000) 'Pro bono and young solicitors: views from the front line' Vol 3(2) *Legal Ethics* 152–68.

A full reference for a journal article will include the name of the author, the title of the article (usually in quotation marks), the volume number and/or the year of the journal that the article appears in, the title of the journal and the start and end page of the journal article. A full reference in a footnote would also include a reference to the page from which you have taken the idea or the quotation.

HOW TO REFERENCE CASES

Name of the case (in full) (year) volume of the law report, Law Report abbreviations page reference.

For example:

Attorney-General v. Guardian Newspapers Ltd (No 2) [1990] 1 AC 109.

Or:

Attorney-General v Guardian Newspapers Ltd (No 2) [1990] 1 AC 109.

Cases should be either **bold**, *italicised* or underlined. If you are writing by hand then they should be underlined. They should be written out in full if you are writing an assessment under anything other than exam conditions. If you are writing an answer to a problem question in an exam and you have not been permitted to bring materials such as a notebook in with you, then use of abbreviated forms of case names is usually acceptable. Do not put the full case reference in the text. If you wish to cite the case reference then put it in a footnote or an endnote. An example of a case name displayed in traditional form would be as set out above. The 'v.' should have a full stop after it to indicate that it is an abbreviation, although this has been phased out by most publishers now. It is pronounced in speech in UK legal circles as 'and' and not 'versus'. Square brackets should be placed around the year that the case was reported provided there is no volume number in that series of law reports. Round brackets are usually used if preceded by a volume number. However, this is not always the case, as indicated in the example above, as some law reports have conventions particular to that series.

HOW TO REFERENCE STATUTES

The full name of the Act including the year of enactment plus the sections to which you refer.

Human Rights Act 1998, s 1 (indicating section 1).

Human Rights Act 1998, ss 1–6 (indicating sections 1–6).

Statute names should be displayed in full the first time you use them, but as long as you provide a definition, they may then be cited in abbreviated format. Therefore, remember that it is important to cite the year in the full citation, as there may be a number of statutes that have the same short title but were passed in different years and this may make all the difference. Statute names should be in title case – the first letter of each word should be capitalised – and may be in **bold**, *italicised*, or underlined, if you prefer.

An example of a statute displayed in traditional form is set out above. If you wish to use an abbreviation for all subsequent mentions of the Act then you should define the abbreviation when you provide the full citation:

Human Rights Act 1998 (HRA 1998).

Remember, too, that whenever you refer to the 'Act', the 'A' should be capitalised thus:

The Act came into force on 2 October 2000.

If you are citing particular sections of an Act, then you may write 'section' or abbreviate that to 's'.

The Human Rights Act 1998, s 6 states that ...

If you are referring to multiple sections then you would cite them by doubling the 's':

The Human Rights Act 1998, ss 6–8 indicate that ...

If you are unsure, then it is always safer to go with the long version, ie, to write out the word 'section', than to make up an abbreviation.

HOW TO REFERENCE WEB PAGES

Web citations should follow the conventions above for either books or articles. However, they should also include the web page address at which they may be accessed and also the date on which the page was accessed (as content changes on the web).

Syrett, K, 'Of resources, rationality and rights: emerging trends in the judicial review of allocative decisions' [2000] 1 *Web JCLI* at <http://webjcli.ncl.ac.uk/2000/issue1/syrett1.html> accessed on 25 June 2004.

Web page citations follow the citation conventions set out for books or articles for the first part of the citation, but then also include a full reference to the web page at which the article can be found, as well as the date on which you accessed it. You should include the date as web page content is dynamic and changes rapidly. Errors could have been corrected since you accessed the page, or alternatively the article could have been replaced or removed altogether. By including the date you are more protected from the charge that you have incorrectly cited information.

HOW TO REFERENCE EDITED COLLECTIONS

These are a hybrid of journal articles and book citations as follows:

Surname of the author of the chapter, initials, 'Title of chapter' Editor's name, initials (eds), *Title of Book* (Place of publication: Publisher, year of publication) pages of the chapter.

For example:

McGlynn, C, 'Judging women differently: gender, the judiciary and reform' in Millns, S and Whitty, N (eds), *Feminist Perspectives on Public Law* (London: Cavendish Publishing, 1999) pp 87–106.

Or:

McGlynn, C (1999) 'Judging women differently: gender, the judiciary and reform' in Millns, S and Whitty, N (eds), *Feminist Perspectives on Public Law* (London: Cavendish Publishing) pp 87–106.

Edited collections are hybrids of journal article and book citations. You should include the name of the author of the chapter, the title of the chapter in quotation marks, the names of the editors, the title of the book in italics, the place of publication, the publisher and the year of publication. Footnoted sources should also include the page number from which the source originates.

HOW TO REFERENCE OTHERS' REFERENCES

You must cite all sources of information including the source that your source is citing.

If your source refers to someone else's source then cite both:

For example:

Dicey (1898), 1959, p 39 as cited in Barnett, H, *Constitutional and Administrative Law*, 4th edn (London: Cavendish Publishing, 2002) at p 177.

In the example, Barnett is my source but I want to refer to Dicey to whom Barnett refers and cites in her work.

To avoid a charge of plagiarism you must be sure to cite your sources (the book or article that you have read) as well as the source of the original information. This sounds complicated but is actually quite simple. Your source is your reference point and the reader needs to know from where you obtained the information. The source of the original information is the source that your textbook writer or other author mentions. Your footnote needs to include all the information required to find the original source and your source. In that way the reader may retrace your research steps and also those of the people who have done their own research to find the original source of the information.

Using abbreviations in footnotes and endnotes

Students tend to worry about how to use Latin abbreviations in footnotes. The honest answer is that you may be able to avoid them in many cases, but if you do want to use the traditional form of footnote and endnote abbreviations, this is how to do it.

Always write out the reference in full the first time you refer to an author's work. You may thereafter abbreviate the reference. There are conventions on how to do this, although there are a number of different options to choose from. Whichever you choose, make sure that you use the same style throughout your assessment. Academics tend to prefer to use Latin abbreviations instead of English ones. Abbreviations should end with a full stop as indicated in the box below, although in more modern texts such as this one full stops are omitted to provide a less cluttered style.

LATIN ABBREVIATIONS

Latin abbreviations that you may see during your research and reading, and which you may use in your essays, are:

Id.

Ibid.

Loc. cit.

Op. cit.

Supra.

Id – this means ‘exactly the same as cited directly above’ and is used if the footnote or endnote is exactly the same as the one immediately above it. It should be the same in all respects including the same page reference. In this instance the footnote would simply contain the abbreviation ‘*id*’ or ‘*Id*’. Many people no longer use ‘*Id*’ but now use ‘*Ibid*’ instead.

Ibid – this means ‘in exactly the same book as cited directly above’ and is used if the footnote or endnote is exactly the same as the one immediately above this one, but for a different page number. In this instance the footnote would be displayed thus:

¹ Sherr, AH and Webley, LC, ‘Legal ethics in England and Wales’ (1997) Vol 4 (1/2) *International Journal of the Legal Profession* 109–38.

² *Ibid.* at p. 130./or *Ibid* at 130./or *Ibid* at p 130.

Loc cit – this means ‘in the place that has been cited above’ and is used where the full citation for a book, report or journal article has been provided previously in

an earlier footnote or endnote, including the page reference or the paragraph. It is similar to '*id.*' but for the fact that there are other footnotes or endnotes in between the original citation and the current one. In traditional works this form of abbreviation is not used for cases or for legislation, which should be cited in full in each instance. However, the rule is becoming blurred.

³ Sherr, AH and Webley, LC, *loc. cit.* at note 1.

Op cit – this means 'in the work cited above' and is used where the full citation has been provided in an earlier footnote or endnote above, but not in the footnote immediately above this one. *Op cit* relates to books, reports and journal articles but not to cases or to legislation. In order for the reader to know which source the writer refers to, the footnote should also contain the authors of the source and may include the footnote or endnote that contains the full citation as follows:

⁴ Sherr, AH and Webley, LC, *op cit.* at note 1 at p 131.

This could be displayed in a more simplified form as follows:

⁴ Sherr and Webley, *op cit.* at 131./or ⁴ Sherr and Webley, *op cit.* at p 131.

Supra – this means 'above' and is used where the full citation has been provided previously in an earlier footnote or endnote. It would normally be followed by the footnote number that contains the full citation as well as the page number relevant to the current footnote. *Supra* is often used in essays in place of both *loc cit* and *op cit*.

There are others, but these are the most commonly used in legal academic writing.² An English equivalent to the Latin versions would simply be to write 'As above' followed by the identifying information that follows the Latin abbreviations in the examples above.

Using and referencing quotes in your writing

Quotations may be good evidence to support a proposition you are making. As stated previously in this book, quotations are no substitute for making your point, but they may be evidence to back up a point you are making. If you are referring to the words of others, you must indicate that the words belong to someone else by putting them in quotation marks in your text and providing a reference to where you found them, usually in a footnote or an endnote.

A quote would be displayed as follows:

'Political and legal sovereignty – from the standpoint of sovereignty within the state as opposed to sovereignty as understood in international law – may be

2 For a fuller discussion of Latin abbreviations and their use in footnotes and endnotes, see Campbell, E and Fox, R, *Students' Guide to Legal Writing and Law Exams*, 2nd edn (Sydney: The Federation Press, 2003).

analysed as meaning either the supreme legal authority within a state or the supreme political authority within a state.(2).³

Quotes of more than three or four lines long are usually indented and put on a separate line from the rest of the paragraph. Shorter quotes would normally be set in the paragraph as normal. All quotes would normally be displayed with quotation marks, or with no quote marks but smaller font size. The usual form is to use ‘...’ as quotation marks and then “...” inside the first set of quotation marks, but few lecturers will be too worried about the type of quotation marks you use as long as you stick to a consistent style. Check with your lecturer to find out whether there is a style guide if you are unsure, particularly in respect of longer pieces of coursework such as dissertations.

BIBLIOGRAPHIES v FOOTNOTES/ENDNOTES

A bibliography is used at the end of a piece of legal writing. It sets out all the sources to which you personally referred.

Footnotes appear at the bottom of each page and they contain the sources you referred to as well as any sources which you are referring to which your own source also referred (as set out above).

Endnotes are similar to footnotes but they all appear at the end of the piece of legal writing, although they are numbered in the text in ways similar to footnotes.

Some lecturers may ask you to use footnotes, or to use endnotes. Some will require you to include a bibliography of your sources at the end of your writing as well as footnotes/endnotes; others will not require both. Check to see what the conventions are for each module.

Bibliographies are used grouped in sources. In other words, books are grouped together as are journal articles, newspaper articles, cases, legislation and edited collections. Sources written by named authors should be ordered in alphabetical order by the author’s last name and, if the author has written more than one work cited in the bibliography, they should be cited chronologically. Works without named authors are often cited alphabetically according to the title of the publication. Cases and legislation are cited alphabetically according to name and then in descending date order.

To conclude, it is important that you reference your work fully. If in doubt it is better to over-reference rather than to under-reference. Keep clear notes of your sources during the research phase including the page numbers from which you have taken notes. It is often easier to photocopy the title page of the source you are using at the same time as you photocopy the pages to which you are

3 See Rees, W, ‘The theory of sovereignty restated’ in Laslett, 1975, Chapter IV as cited in Barnett, H, *Constitutional & Administrative Law*, 4th edn (London: Cavendish Publishing, 2002) p 177.

going to refer, as this contains most of the information that you will need for your footnotes. Your bibliography will include all sources that you have read and made use of in your written work.

EXERCISE 1: TEST YOUR UNDERSTANDING OF REFERENCING: CITING OTHERS' WORK

Read the extract below from Hilaire Barnett's book, then try the following task. There are answers set out at the end of the book.

PARLIAMENTARY SOVEREIGNTY⁴

INTRODUCTION

[1] The sovereignty, or supremacy, of parliament is 'the dominant characteristic of our political institutions'.(1) Sovereignty as a doctrine has long caused controversy amongst philosophers, lawyers and political scientists and is a concept which assumes – as does the rule of law – differing interpretations according to the perspective being adopted. By way of example, international lawyers are concerned with the attributes which render a state independent and sovereign within the international community. Political scientists are concerned with the source of political power within the state. Legal theorists and constitutional lawyers, particularly in the United Kingdom where the matter remains contentious, are concerned to identify the ultimate legal power within a state.

DIFFERING INTERPRETATIONS OF 'SOVEREIGNTY'

Political and legal sovereignty – from the standpoint of sovereignty within the state as opposed to sovereignty as understood in international law – may be analysed as meaning either the supreme legal authority within a state or the supreme political authority within a state.(2)

Sovereignty as supreme legal authority

It is this interpretation with which AV Dicey and later constitutional writers are concerned. As this meaning is the central focus of our concern in understanding legislative – or parliamentary – sovereignty, consideration will be postponed until other interpretations of the concept have been considered.

Sovereignty as supreme political authority

The essence of this idea is that lawful power and authority must be in conformity with moral dictates: some form of 'higher law' or 'natural law'. Political theorists of the eighteenth century contributed much to an understanding of the idea of ultimate authority. Four broadly similar approaches, each entailing the idea of a 'social contract', may be outlined here.

[2] Thomas Hobbes(3) offered the most extreme version of the social contract theory, arguing that man by nature is incapable of regulating his life in peace and harmony with his fellow man. Hobbes's view of man in a society lacking a restraining all-powerful sovereign was inherently pessimistic, an attitude encapsulated in the often quoted phrase that life is 'solitary, poor, nasty, brutish and short'. In order for there to be civil order, it was necessary for each man to surrender to the state his own sovereignty in exchange for security. Such a surrender was revocable only if the state abused its trust. The requirement of obedience to law is strict: and yet there are limits:

If the Sovereign command a man (though justly condemned) to kill, wound, or mayme himselfe; or not to resist those that assault him; or to abstain from the use of food, ayre, medicine, or any other thing, without which he cannot live; yet hath that man the Liberty to disobey.

4 Extract from Barnett, H, *Constitutional & Administrative Law*, 4th edn (London: Cavendish Publishing, 2002) pp 177–78.

Further, Hobbes states that:

The Obligation of Subjects to the Sovereign, is understood to last as long, and no longer, than the power lasteth, by which he is able to protect them. For the right men have by Nature to protect themselves, when none else can protect them, can by no Covenant be relinquished.

According to Jean-Jacques Rousseau,(4) the citizen enters into a 'contract' with the state, surrendering to the state individual rights in exchange for the protection of the state. The state, according to Rousseau, is thus embodied in the 'general will' of the people and becomes both the agent and ruler of the people in the peoples' name. Rousseau's vision of man differs markedly from that of Thomas Hobbes – far from living in a state of 'war' with one another, men in the 'natural state' of primitive society would have nothing to fight over and would be united in a community of endeavour to secure the essential provisions of life ...'

- (1) Dicey (1898), 1959, p 39.
- (2) For a more elaborate categorisation, see Rees, 'The theory of sovereignty restated', in Laslett, 1975, Chapter IV.
- (3) The Leviathan (1651), 1973.
- (4) *The Social Contract and Discourses* (1762), 1977.

- 1 Read the first paragraph marked [1] and quote the first sentence. Provide a full reference in a footnote for the quote.
- 2 Read the paragraph marked [2] and quote Barnett's first quotation, including the lead in sentence. Provide a full reference, including the primary and secondary source.
- 3 Read the paragraph marked [1] again. Put the main points in your own words (paraphrase them) in one paragraph of your own, as you would for an essay. Provide footnotes citing that work in full.

The answers are set out in the answer section towards the end of the book.

EXERCISE 2: FULL AND ACCURATE REFERENCING

Look at the following title pages and then write a full citation for each one. The answers are towards the end of the book.

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1. Public law
II. Millns, S II. Whitty, Noel
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Extract from Contents Page:

Series editors' preface	v
Acknowledgments	vii
Contributors	ix
Table of cases	xiii

<i>Table of abbreviations</i>	<i>xvii</i>
1 PUBLIC LAW AND FEMINISM	1
<i>by Susan Millns and Noel Whitty</i>	
2 COSMOPOLITAN FEMINISM: TOWARDS A CRITICAL REAPPRAISAL OF THE LATE MODERN BRITISH STATE	19
<i>by Thérèse Murphy</i>	
3 ROYALTY AND IDENTITY IN PUBLIC LAW: DIANA AS QUEEN OF HEARTS, ENGLAND'S ROSE AND PEOPLE'S PRINCESS	41
<i>by Noel Whitty</i>	
cont ...	

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Cite Hilaire Barnett's book in full as you would in a bibliography.

SUMMARY

CHAPTER 6

Other writers' words and ideas must be fully and accurately referenced in your written work. Failure to reference properly may result in marks being deducted for poor scholarship or a charge of plagiarism being made against you.



