UNSW Law Society

Mooting Cheatsheet: Legal Research

When making both written and oral submissions, it is critical that the arguments you make are supported by authority. Good legal research is essential to ensure your arguments are supported by the best and most relevant authority.

Do's

1. **Split your research into different stages.** First gain a general understanding of the area of law that the grounds of appeal deal with by reading law textbooks and legal encyclopedias such as Halsbury's Laws of Australia (Lexis Advance). Then, after identifying the key issues and possible arguments, engage in more detailed research by researching the relevant case law.
2. **Apply or Distinguish analogous cases.** An excellent way to strengthen your argument is to show the judge that a similar argument/decision has been successfully made before. Similarly, if you are trying to avoid the application of a factually similar decision, draw a distinction with (or 'distinguish') it to show why it should not be applied.
3. **Cite 'good law'.** It is important to notice whether a case has been approved or disapproved in later cases. A case that has been overturned will no longer be 'good law' and cannot be cited to support a legal proposition. Similarly, it is important to note the court where a decision was made. A judgement from a High Court judge is much more persuasive than that of a District Court judge.
4. **Use Ratio rather than Obiter Dicta.** Excerpts drawn from the central argument behind the decision, 'the ratio decidendi', are more persuasive than arguments drawn from commentary on ancillary issues, 'obiter dicta'.
5. **Remember that a judgement made in the minority may still be useful.** In some cases, a minority judgement may make an observation not disputed or discussed by judges in the majority. Alternatively, in some areas of law a significant minority judgement (such as in a 5-4 decision in the High Court) could be the basis for an argument if subsequent cases could be used to support their argument.
6. **Know the details of each case you cite.** This includes the full citation, the court it was heard in, a brief summary of facts, the majority and minority judgments, and the outcome.

Don'ts

1. **Cite secondary sources.** Only case law and, where necessary, legislation should be cited as authority. Avoid citing Dictionaries, Textbooks, Newspapers, Websites etc. These are not authorities.
2. **Cite every case you find.** It is important to only cite relevant cases. This helps to ensure that your submissions are direct and concise.