

Understanding and Using Citations to American Cases

Robert Angyal, a member of the District of Columbia Bar, provides an insight into the labyrinth of United States Authorities.

It used to be said that it was the job of learned counsel appearing before the High Court to cite decisions of the US Supreme Court, and that it was the job of the learned justices to distinguish them. Lately, however, the High Court seems to have been placing considerable weight on US decisions. See, for example, *Attorney- General (NSW v Quin)* (1989-1990) 170 CLR 1 at 38 n.5.

But consider this footnote from the fifth edition of *Jacobs' Law of Trusts in Australia* (1986) supporting the proposition (relating to constructive trusts) that "[a] different view has been taken in the United States":

"*People's Bank of Wilkesbarre v Columbia Collieries Co* (1915) 84 SE 914; *Drummond v Batson* (1924) 258 SW 616; *Olson v Cornwell* (1933) 25 P 2d 879; *Merrill on Notice* §1190 fn 63,65" (page 309, n.170).

The three cases cited are reported in three of the seven series of regional reports published by the West Publishing Company: respectively the South Eastern Reporter, the South Western Reporter and the Pacific Reporter. Each of those series reports decisions of appellate courts of a number of states in a region of the USA. For example, the Pacific Reporter covers decisions of these states: Alaska, Arizona, California, Colorado, Hawaii, Idaho, Kansas, Montana, Nevada, New Mexico, Oklahoma, Oregon, Utah, Washington and Wyoming.

The point is simple: one cannot tell from the citation which courts rendered the decisions reported¹. That makes it difficult to evaluate their persuasiveness. Australian legal writings seem fairly frequently to omit this important information.

The purposes of this article are to explain briefly:

- The structure of US courts
- The implications of this structure for Australian lawyers
- Common citations to US cases.

1. The Structure of US Courts

1.1 State Courts

At first sight, the US presents a forbiddingly complicated picture. But the basic structure is fairly simple. Each of the 50 states is a separate jurisdiction. So too is the District of Columbia (Washington DC), the federal capital. As one would expect, there is a hierarchy of courts within each of these jurisdictions, with trial courts, an appellate court and sometimes an intermediate appellate court.

The reports of the state courts are outlined below in Section 3.1

1.2 Federal Courts

Superimposed on the 51 sets of state courts are the federal courts. These largely deal with questions of federal law (ie. arising under federal statutes or the US Constitution) although they also have jurisdiction where the parties are citizens of different states (in which case they apply state law). The reports of the federal courts are outlined in Section 3.2.

There are some specialist federal courts such as the

Bankruptcy Courts and the Tax Court. Apart from these, there are three levels of federal courts:

The US District Courts, which are the trial courts. Each has jurisdiction in a district, a certain geographic area within a state. There are 94 US district courts. For example, the US District Court for the Southern District of New York covers, and sits in, Manhattan.

The US Courts of Appeals. There are 13 of these, each (except the Federal Circuit) taking appeals from the US District Courts within a geographic area called a circuit. For example, the US Court of Appeals for the Tenth Circuit takes appeals from US district courts in the states of Colorado, Kansas, New Mexico, Oklahoma, Utah and Wyoming. The map on page 7 shows the areas covered by the US Courts of Appeals.

The US Supreme Court sits at the pinnacle of the US judicial hierarchy. But it is a very different court from the Australian High Court. Most significantly for Australian lawyers, it is not a court of general jurisdiction. It has limited powers to review the decisions of the State courts. Its jurisdiction principally arises where the validity of a federal law has been questioned below, or where a State statute's validity has been questioned as being repugnant to the US Constitution. It always sits as a full court of nine justices, with oral argument severely limited (usually to one hour per case).

Like the High Court, its jurisdiction is largely discretionary; the equivalent to seeking special leave to appeal is seeking a writ of certiorari to review the decision below.

The limited jurisdiction of the US Supreme Court has given rise to results that may seem peculiar to antipodean eyes. For example, under Chief Justice Earl Warren, the Court in the 1960s greatly expanded the scope of the constitutional protections afforded by the US Constitution, particularly in the area of criminal law. Thus, for example, it held that every criminal defendant had a right to a lawyer: *Gideon v Wainwright*, 327 US 335 (1965). And in its famous *Miranda v Arizona* decision, 384 US 436 (1966), it held that a criminal suspect had to be informed of his or her rights to remain silent and to have a lawyer before being interrogated.

The State Supreme Courts, which interpret the states' constitutions, lagged behind for a time. Then, under the weight of conservative, Republican, appointees, the US Supreme Court became more conservative. By that time, some of the State Supreme Courts had caught up. As the US Supreme Court declined to extend constitutional protections or, in some cases, trimmed them back, State Supreme Courts, construing the often identical words of their state constitutions, were often able to find more extensive protections in them. As long as they merely construed their states' constitutions, no question of federal law arose, and thus no review of their decisions by the US Supreme Court was possible.

1. The decisions, respectively, were rendered by the Supreme Court of Appeals of West Virginia, the Supreme Court of Arkansas, and the District Court of Appeals, First District, Division 1 of California (an intermediate appellate court).

2. The Implications of this Structure

Australian lawyers will immediately perceive some implications from the structure outlined above. First, there is the fact that the federal courts largely are confined to deciding questions of federal law. This means that unless one is interested in an area governed primarily by federal law (such as securities, copyrights, patents, trade practices or tax) or in constitutional questions, relevant decisions are more likely to be found in the state courts' reports. Second, that fact makes it all the more important to be able to assess the weight of such decisions. Finally, it obviously becomes important to cite such decisions in a way that enables the bench or the reader to know which court's decisions are being referred to.

3. The Structure and Citation of US Reports

3.1 The State Courts

Most states have an official series of reports for their appellate decisions. The conventional US rules of citation (set out in a citation guide published jointly by the law reviews of Columbia, Harvard, The University of Pennsylvania and Yale law schools², and referred to as "the blue book") require citation to these reports. The official reports are unlikely to be obtainable in Australia, but the West regional reporters (described below) are, and from the regional reporters one can pick up the official report reference. Because of this, it is better to cite both sets of reports. An example, citing to the Minnesota reports and the North Western Reporter, 2nd series, is:

Gardner v Conway, 234 Minn. 468,
48 N.W.2d 788 (1951)

which, one can tell from the reference to the Minnesota Reports, is a decision of the Minnesota Supreme Court. More commonly used are the seven sets of West regional reports. The states that each covers are set out on page 7.

A proper citation to a California Supreme Court decision if one only refers to a regional reporter is:

Kinlaw v State of California, 814 P.2d 1308 (Cal.1991).

In this citation "P.2d" refers to the second series of the Pacific Reporter. One of the most critical pieces of information in this citation is "(Cal.)". This tells the reader it is a decision of the California Supreme Court, and thus probably likely to carry more weight than a decision of the Montana (pop. 799,065) or the Hawaii (pop. 1,108,229) Supreme Courts, which also appear in the Pacific Reporter.

It should be realised that these are huge sets of reports. As the list on page 7 shows, both the Pacific Reporter 2d. and the South Western Reporter 2d. currently contain about 800 volumes.

3.2 Federal Court Reports

The US Supreme Court

The official reports are the US reports, starting in 1789 and now running to about 483 volumes. There are two commercial series devoted to the US Supreme Court, West's Supreme Court Reporter and The Lawyer's Co-operative Publishing Co.'s Supreme Court Reports, Lawyer's Edition. The Bar Association's library holds

the latter reports, both the first series (vols. 1-100, 1754-1955) and the second series (1956 to date). A citation to all three reports would read:

Gideon v Wainwright, 372 US 335;
83 Sup.Ct 792; 9 L.Ed.2d 799 (1963).

Note that because all three reports only report decisions of the US Supreme Court, there is no need to identify the court in a citation to them.

The US Courts of Appeals

Remember that there are 13 of these, each with its own circuit. Each is a separate court with its own character. Their many decisions are reported in the Federal Reporter (1st series), volumes 1-300 (1880-1924) (cited as "F.") and, since then, in the Federal Reporter, 2nd Series, vols. 1-about 942 (1924-1991) (cited as "F.2d"). To house just the Federal Reporter, 2nd series, to date takes about 51 metres of shelf space. A proper citation will identify which series is referred to and the court of appeals making the decision, for example:

General Motors Corp. v City of New York,
501 F.2d 639 (2d Cir. 1974).

Without the court being identified, it is impossible to evaluate the weight of the decision. A decision of the US Court of Appeals for the District of Columbia Circuit, whose caseload contains a large number of appeals from decisions of federal administrative agencies, is more likely to be persuasive on a question of administrative law than a decision of the Eighth Circuit, covering the relatively rural states of Arkansas, Iowa, Minnesota, Missouri, Nebraska, North Dakota and South Dakota.

The US District Courts

The decisions of the US district courts primarily appear in the Federal Supplement (1932 to date, vols.1-about 769) (cited as "F.Supp.").

Again, it is important to identify the court that made the decision. A decision of the US District Court for the Southern District of New York, which sits in Manhattan, on a question of trademark infringement (eg, *Coach Leatherware Company, Inc. v Anntaylor, Inc.*, 751 F.Supp. 1104 (S.D.N.Y. 1991)), or on securities law, is more likely to be persuasive than decisions of the US District Court for the Western District of Arkansas on the same topics.

4. Access to the US law reports

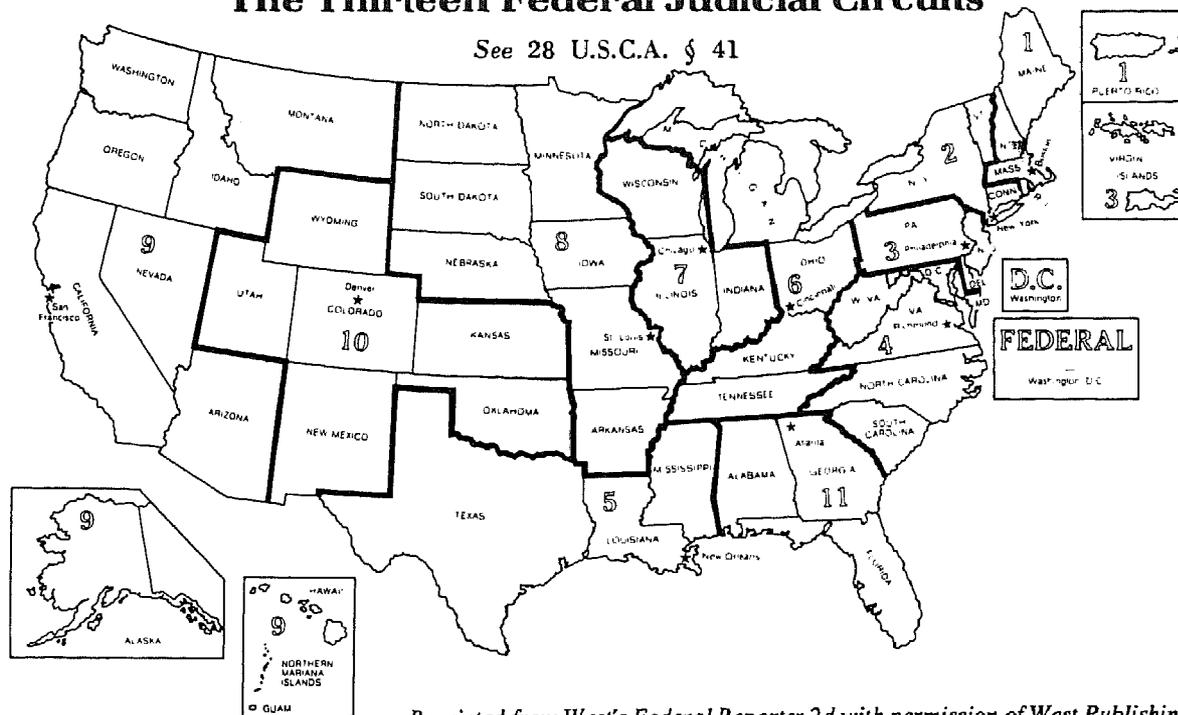
The University of Sydney Law School's library has an excellent collection of US materials, including:

- . The United States Reports
- . The Supreme Court Reporter
- . US Law Week (a weekly reporter on the US Supreme Court)
- . The Federal Reporter, first and second series
- . The Federal Supplement
- . The United States Code Annotated (an up-to-date compilation of federal statutes, with annotations)
- . All seven regional reporters, both the first and second series
- . The two principal US legal encyclopaedias, *Corpus Juris Secundum* and *American Jurisprudence 2d* (each more than 100 volumes). □

2. *A Uniform System of Citation* (14th ed. 1986).

The Thirteen Federal Judicial Circuits

See 28 U.S.C.A. § 41



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THE REGIONAL REPORTERS

Atlantic Reporter

Atlantic Reporter (1st series): vols 1-200
(1885-1938) (cite as "A.")

Atlantic Reporter 2d: vols 1-583
(1938-1991) (cite as "A.2d").

States: Connecticut, Delaware, Maine, Maryland, New Hampshire, New Jersey, Pennsylvania, Rhode Island, Vermont and District of Columbia Municipal Ct. of App.

North Eastern Reporter

North Eastern Reporter (1st Series): vols 1-200
(1885-1936) (cite as "N.E.")

North Eastern Reporter 2d: vols 1-561
(1936-1991) (cite as "N.E.2d").

States: Illinois, Indiana, Massachusetts, New York and Ohio.

North Western Reporter

North Western Reporter (1st Series): vols 1-300
(1879-1941) (cite as "N.W.")

North Western Reporter 2d: vols 1-461
(1941-1991) (cite as "N.W.2d").

States: Iowa, Michigan, Minnesota, Nebraska, North Dakota, South Dakota and Wisconsin.

Pacific Reporter

Pacific Reporter (1st Series): vols 1-300
(1883-1931) (cite as "P").

Pacific Reporter 2d: vols 1-802
(1931-1991) (cite as "P.2d").

States: Alaska, Arizona, California, Colorado, Hawaii, Idaho, Kansas, Montana, Nevada, New Mexico, Oklahoma, Oregon, Utah, Washington and Wyoming.

Southern Reporter

Southern Reporter (1st Series): vols 1-200
(1887-1941) (cite as "So.")

Southern Reporter 2d: vols 1-568
(1941-1991) (cite as "So.2d").

States: Alabama, Florida, Louisiana and Mississippi.

South Eastern Reporter

South Eastern Reporter (1st Series): vols 1-200
(1887-1939) (cite as "S.E.")

South Eastern Reporter 2d: vols 1-396
(1939-1991) (cite as "S.E.2d").

States: Georgia, North Carolina, South Carolina, Virginia and West Virginia.

South Western Reporter

South Western Reporter (1st Series): vols 1-300
(1886-1928) (cite as "S.W.")

South Western Reporter 2d: vols 1-797
(1928-1991) (cite as "S.W.2d").

States: Arkansas, Kentucky, Missouri, Tennessee and Texas.