

Guidance on how to reference and write a law essay

Citation (See Thomas O'Malley, *Sources Of Irish Law*, 2nd ed., Dublin: Roundhall Sweet & Maxwell, 2001, pp. 25 - 47.)

Citing Cases

(a) Names

- The name of a case is almost always placed in italics and the remainder of the citation is in ordinary type, e.g. *The State (Healy) v Donoghue* [1976] IR 325
- Typical citations for criminal cases would be as follows:
 - *The People (Director of Public Prosecutions) v Tiernan* [1988] IR 250
 - *The People (Attorney General) v O'Callaghan* [1996] IR 501
 - The abbreviations DPP and AG are generally accepted.
- A typical citation for a civil case would be:
 - *Murphy v Kelly* [2001] IR 167
- Some cases in the High Court are begun by petition, especially in the area of company law, in probate cases dealing with the validity or interpretation of wills and in Article 26 references e.g.
 - *In re Atlantic Magnetics Ltd.* [1993] 2 IR 561
 - *In re The Matrimonial Home Bill 1993* [1994] 1 IR 305
- Some cases may be heard *in camera* and only the initials of the parties involved are used, e.g.
 - *RC v E.B.* [1997] 1 IR 305

(b) Law Reports

- Once you have correctly cited the names of the parties to a case, you then need to state where this case is found.

- The basic rule is: Give the names of the parties, followed by the year, the volume number (if relevant), and the abbreviation of the law report where the case is reported, followed by the page number, e.g., *Donoghue v Stevenson* [1932] AC 562; *de Burca v Attorney General* [1976] IR 38
- All law report series have abbreviations, e.g. IR = Irish Reports, ILRM = Irish Law Reports Monthly.
- Some law reports contain different volumes and therefore the volume number should be used in the citation, *Glencar Explorations plc v Mayo County Council* [1993] 2 IR 237
- For an unreported judgment, the format is:
De Rossa v Independent Newspapers, unreported, Supreme Court, January 30 1999.

Citing Statutes

- Use the short title of the Act, followed by the year of enactment, e.g. *Succession Act 1965* (italicise the name of the Act).
- A section of an act can be abbreviated to s, e.g. *Succession Act 1965*, s5 or *Succession Act 1965*, ss6 and 7
- The format for subsections is: *Succession Act 1965*, s5(1)(b)(ii) = sub-paragraph (ii) of paragraph (b) of subsection (1) of section 5.

Citing Statutory Instruments

- A Statutory Instrument may take the form of an order, a regulation, a rule, a scheme or a bye-law (See the *Statutory Instruments Act 1947*.)
- You must give the name of the Statutory Instrument, followed by its number and year, e.g. *Local Government (Planning and Development) Regulations (SI No 89 of 1990)*.

Citing the Constitution

- The Constitution is made up of articles, paragraphs, sub-paragraphs (and, less frequently, sections). To cite a provision of the Constitution, you simply give the numbers of the relevant article, paragraph etc.
Article 15.2 (on the legislative power of the Oireachtas).

Citing EU legal sources

(a) Cases

- Pre-1989, all cases would be cited using its number, name, year, name of report series and the page numbers where it can be found, e.g:

Commission v Greece (Case 272/86) [1988] ECR 4875

- With the establishment of the Court of First Instances, a differentiation had to be made between cases from this court and cases from the ECJ. Therefore, cases from the ECJ were prefixed with the letter C and cases from the Court of First Instances are prefixed with the letter T. Since the beginning of 1990, the E.C.R. have also been divided into two parts - Part I deals with cases from the ECJ and Part II deals with cases from the Court of First Instance e.g:

Gestetner v Council (Case C-156/67) [1990] ECR I-781

Hochbaum v Commission (Case T-38/89) [1990] ECR II-43

- Some cases may also appear in the *Common Market Law Reports* (CMLR). A typical citation would be:

Parliament v Council Case C-316/91 [1994] 3 CMLR 149.

(b) Secondary Legislation

- All secondary legislation and some other types of information is published in the *Official Journal of the European Communities* (*Official Journal / OJ*)
- To cite European legislation, you need: the name of the institution in which it originated, i.e. the Commission or Council, nature (i.e. Regulation, Directive, Decision etc.), the number, year, treaty under which it was made (i.e. EC, ECSC or Euratom) and the date. Citations are often accompanied by the OJ reference.
- In Regulations, the name of the Treaty comes before the number and year:

Reg No 3158/92 of 30 October 1992 fixing the import levies on rice and imported rice.

- Both Directives and Decisions are cited by reference to year, number and treaty:

Commission Directive 2000/1/EC of 14 January 2000 adapting to technical progress

Citing Secondary Material

- Generally the title of a book or journal are in italics and all of the other information is in ordinary type.
- The title of a journal article is placed in inverted commas.
- When citing a book, you need the name(s) of the author(s) / editor(s), the title of the book, the edition if there is more than one, the place, publisher and date of publication. Also, if you are quoting directly from the book, you need the page(s) from where you took the quote. Example:
 - Byrne & McCutcheon, *The Irish Legal System*, 4th ed, Dublin: Butterworths, 2001, p. 3.
- When citing an article, you need the name(s) of the author(s), the title of the article, the title of the journal, the date of publication, the volume and the page on which the article begins. Example:
 - Bollinger, 'Free Speech and Intellectual Values' (1983) 92 Yale LJ 438.

Citing Electronic Sources

- When citing an electronic source, it is usual to give the uniform resource locator (url). The convention of enclosing the url with <> is recommended. You must supply the date given for the date you accessed it.
- A typical citation would include the following elements: Author, 'Title', Year of Publication Volume of Journal *Name of Journal* <url> , e.g.:

Bradgate R, 'Consumer Guarantees: the EC's draft Directive'
[1997] 1 *Web JCLI*
<<http://webjcli.ncl.ac.uk/1997/issue1/bradgate1.html>> Last
accessed 31/06/05

Some electronic publications may not use page numbers, or may have numbered paragraphs. Use whichever style the publication itself adopts.

- See Pearl Rozenberg, 'Developing a Standard for Legal Citation of Electronic Information' in *Murdoch University Electronic Journal of Law*, Volume 4, Number 4, (December 1997), <<http://www.murdoch.edu.au/elaw/issues/v4n4/rozenb44.html>> Last accessed 31/03/05

Section 4: Writing a Legal Essay

The main parts of the essay are as follows:

1. Title.

2. Introduction.

In the introduction you should set out the main argument of your essay. The introduction can also include an explanation of the structure of your essay.

3. Body.

The main part of your essay should be divided into sections and paragraphs. Headings and sub-headings should be used.

4. Conclusion.

In the conclusion, you must briefly summarise the main points you made in the body of your work and then give an overall response to the essay title.

5. Appendix (if any)

You might want to include e.g. an important piece of legislation in your appendix.

6. Bibliography.

Divide your bibliography sections: Books, Journal Articles and Other. Arrange all the sources alphabetically.

7. List of statutes/legislation.

Divide by jurisdiction. Arrange chronologically or alphabetically.

8. List of cases.

Divide by jurisdiction. Arrange alphabetically.

Footnotes and endnotes

You must use footnotes in your essay. Footnotes should be numbered consecutively. If your work is a thesis or dissertation, which contains chapters, the sequence of numbers should begin anew with each chapter.

You can use footnotes for referencing legal sources or to give more details, e.g. definitions, explanations, or points of information that are not directly related to the work at hand.

You can use abbreviations in the footnotes, e.g. instead of writing out the name of the author and the name of the book you are referring to - Murphy, *Irish Law*, Dublin: Butterworths, 2005 - you need only refer to 'Murphy, 2005'.

Writing a Law Essay-Example

(a)

The tort of defamation essentially seeks to balance two competing interests; the right of free speech and the right of the individual to protect his/her reputation from unjust attack.¹ The law of defamation in Ireland is based largely on common law and statute law (in particular, the *Defamation Act 1961*). While *Bunreacht na hÉireann* (the Irish Constitution, enacted in 1937) is mentioned occasionally in defamation cases, as McMahon and Binchy point out:

‘the position maintained up to now by the courts in the defamation area has been that the constitutional protection of the citizen’s “good name” is being adequately protected by the common law of torts’.²

The guarantee in Article 40.6.1° of the right to express convictions and opinions is hedged around with restrictions so that the level of protection for the media found in the United States, for example, simply does not apply in Ireland.³ In addition, Article 40.3 protects the ‘good name’ of the citizen and, in a number of cases, the judges have emphasised that the law of defamation can be seen as protecting this important constitutional interest.⁴ While the right to express opinions is to be balanced against the right to reputation, reputation generally comes out ahead in the hierarchy of rights. Increasingly, applicants in the UK are invoking the *Convention for the Protection of Human Rights and Fundamental Freedoms 1950* (also known as the *European Convention on Human Rights* or ECHR) in this area. The decision of the European Court of Human Rights in *Steel and Morris v UK*,⁵ for example, may have implications for the granting of legal aid to defendants in defamation cases.⁶

¹ McMahon & Binchy, *Law of Torts*, 3rd ed, Dublin: Butterworths, 2000.

² McMahon & Binchy, p880.

³ O’Dell, ‘Does Defamation Value Free Expression? The Possible Influence of *New York Times v Sullivan* on Irish Law’ (1990) 12 DULJ 50.

⁴ See, for example, the decision of Moran J. in *Bailey v Irish Mirror Group* (Circuit Court, January 19 2004).

⁵ Application no 68416/01 ECHR 2005

⁶ At present, under s.28 (9) of the *Civil Legal Aid Act 1995*, the Legal Aid Board is prohibited from providing legal aid or advice in respect of defamation claims.

According to Quill, defamation concerns ‘the protection of a person’s right to his reputation against false allegations’.⁷ A definition of the tort of defamation can be derived from *Quigley v Creation Ltd*⁸ Defamation is committed by the wrongful publication of a false statement about a person, which tends to lower that person in the eyes of right-thinking members of society or tends to hold that person up to hatred, ridicule or contempt, or causes that person to be shunned or avoided by right-thinking members of society.⁹

It is important to remember that there are several defences to a claim of defamation. The *Defamation Act 1961*, for example, allows a full defence where the publisher makes an unintentional reference to a person but then publishes what is called an ‘offer of amends’; that is a statement acknowledging the mistake and also making an apology.¹⁰ One of the most important defences is that of ‘qualified privilege’. The House of Lords laid down the grounds for successfully making out this defence in *Reynolds v Times Newspapers Ltd*.¹¹ Some of the factors to be taken into account by the Court are:

‘(1) The seriousness of the allegation. (2) The nature of the information. (3) The source of the information. Some informants have no direct knowledge of the events’.¹²

The Irish Courts adopted the ‘Reynolds Privilege’ criteria in *Hunter & Callaghan v Duckworth & Company and Blom-Cooper*.¹³

Many reforms of the law on defamation have been proposed.¹⁴ The Law Reform Commission (LRC) recommended that:

⁷ Quill, *Torts in Ireland*, 2nd ed, Dublin: Gill & Macmillan, 2004 p315.

⁸ [1971] IR 269

⁹ *Quigley v Creation Ltd*. [1971] IR 269; *Berry v Irish Times* [1973] IR 368

¹⁰ S. 21.

¹¹ [1999] 4 All ER 609

¹² *Reynolds v Times Newspapers Ltd* 1999] 4 All ER 609 at 626, *per* Lord Nicholls.

¹³ [2003] IEHC 81

¹⁴ See, for example, Kealey, *Reform of the Civil Law of Defamation* (2005) Bar Council Conference Papers

<<http://www.lawlibrary.ie/viewdoc.asp?Docid=132&Catid=18&StartDate=01+January+2005&m=>> Last accessed 31/01/06

'it should be a defence to a claim for general damages in respect of a defamatory allegation of fact that the defendants exercised reasonable care prior to publication in attempting to ascertain the trust of the allegation'.¹⁵

(b)

EC law is found in the Treaties and in secondary legislation. The Treaty Articles contain very broad principles regulating the free movement of workers. The difficulty is that it will be impossible to apply these broad principles to the various situations that will arise in practice. Therefore, these broad principles are fleshed out in the secondary legislation to regulate these various situations. Article 39 EC Treaty (formerly Article 48) is the essential treaty provision under which the freedom of workers shall be secured within the Community. The Article requires the abolition of any discrimination based on nationality between workers of the Member States in relation to employment, remuneration, and other conditions of work and employment.

The right to free movement is directly effective, and has both vertical¹⁶ and horizontal¹⁷ effect. The right of movement and residence within the territory of the Member States by Union citizens and their family members was up until 2004 governed by two Regulations and nine Directives. Directive 2004/38¹⁸ amends Regulation 1612/68¹⁹ and codifies the remaining complex body of previous legislation into one single instrument.

The Treaty does not define worker, so it has been left to the European Court of Justice (ECJ) to shape the meaning of the term in a series of Article 234 (formerly Article 177) references. In *Levin v Staatsecretaris van Justitie*²⁰ the ECJ held that the definition of a worker must be an EC one and cannot be determined by the laws of the Member States. The ECJ held that as the free

¹⁵ LRC Report on Civil Law of Defamation 1991, para. 3.13

¹⁶ *Union Royal Belge des Societies de Football Association ASBL & Others v Jean-Marc Bosman*, (Case C-415/93) [1995] ECR I-4921

¹⁷ *Angonese v Cassa di Risparmio di Bolzano SpA* (Case C-281/98) [2000] ECR I-4139

¹⁸ European Parliament and Council Directive 2004/38/EC of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States [2004] OJ L158

¹⁹ Reg No 1612/68 on the free movement of workers [1968] OJ Spec. Ed Series I-475

²⁰ (Case 53/81) [1982] ECR 1025

movement of persons is a fundamental freedom of the Community it must be broadly interpreted. As such, the purpose or motive of the worker is immaterial as long as s/he is pursuing a genuine and effective economic activity (to the exclusion of activities on such a small scale as to be regarded as purely marginal or ancillary). The ECJ has, thus, adopted a liberal definition of worker.²¹ So, in one case a waitress working on an 'on-call' contract, which gave no guarantee of the hours to be worked was held to be a worker.²² The Court held in *Raulin* that the question of whether she would be a worker would be for the Member State to decide, taking into account both the irregular and limited duration of the services performed and the fact that the person needed to be available to work if called on by the employer.

²¹ Craig and de Burca, *EU Law: Text, Cases and Materials*, 3rd ed, Oxford: Oxford University Press, 2002.

²² *Raulin .v Minister van Onderwijs en Wetenschappen* (Case C-357/89) [1992] ECR I-1027

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LIST OF STATUTES

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Defamation Act 1961 (Act no 41 of 1961)

Irish Statutory Instruments

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District Court 1997 (SI No 93 of 1997) Reg 4

Local Government (Planning and Development) Regulations (SI No 89 of 1990)

UK Statutes

Defamation Act 1996 (Act No 31 of 1996)

LIST OF CASES

Cases before the European Court of Human Rights

Steel and Morris v UK, Application no. 68416/01 ECHR 2005

Cases before the European Court of Justice

Angonese v Cassa di Risparmio di Bolzano SpA (Case C-281/98) [2000] ECR I-4139

Commission v Greece (Case 272/86) [1988] ECR 4875

Gestetner v Council (Case C-156/67) [1990] ECR I-781

Hochbaum v Commission (Case T-38/89) [1990] ECR II-43

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Berry v Irish Times [1973] IR 368

Boland v An Taoiseach [1974] IR 338

Hunter & Callaghan v Duckworth & Company and Blom-Cooper [2003] IEHC 81

In re The Matrimonial Home Bill 1993 [1994] 1 IR 305

Murphy v Kelly [2001] IR 167

Quigley v Creation Ltd. [1971] IR 269

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UN International Covenant on Civil and Political Rights 1966

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European Convention for the Protection of Human Rights and Fundamental Freedoms 1950

European Union

Treaty of Rome 1957

Treaty of Amsterdam 1998