

AVOIDING PLAGIARISM

WHEN CONDUCTING LEGAL RESEARCH

What is plagiarism?

Plagiarism is the act of using of another person's work without appropriate acknowledgement. If you have presented another person's work as your own, you will have committed plagiarism *even if you did not intend to do so*.

Plagiarism includes (but is not limited to) presenting as your own work material that you have:

- (a) copied verbatim;
- (b) paraphrased, summarised or the wording of which you have simply rearranged;
- (c) expressed in your own words but which contains another person's idea or interpretation; or
- (d) 'cut and pasted' from multiple sources.

The plagiarism can relate to a paragraph, a series of sentences, a single sentence or even part of a sentence.

You also commit plagiarism if you present as your own independent work any work that you have in fact done in collaboration with other students. This form of plagiarism is known as 'collusion'.

What are the consequences of committing plagiarism?

Plagiarism constitutes academic misconduct. A finding of academic misconduct carries with it a range of penalties from zero marks for the piece of assessment in question through to expulsion from the University, and the finding will be noted on your academic record.

Since a finding of academic misconduct relates to your personal character, it must be disclosed if you are seeking admission as a legal practitioner, and it can be the basis for an objection to your admission. *The consequences for law students of a finding of academic misconduct are therefore extremely serious.*

How do I avoid committing plagiarism?

It is certainly not the case that you cannot include the words or ideas of others when you conduct legal research – in fact, it is unavoidable. What you are not permitted to do is present those words or ideas without identifying them as the words or ideas of others.

If you include another person's idea or interpretation in your work, you must indicate the original source of that idea or interpretation by including a 'reference'. Here in the Law School, the correct citation style is that set out in the third edition of the *Australian Guide to Legal Citation*. It is extremely important that you familiarise yourself with the many rules relating to legal referencing set out in the Guide. The fact that a particular rule within the Guide was not explicitly drawn to your attention is not an excuse for non-compliance.

If in addition to including the other person's idea or interpretation you use their actual words, then in addition to including a reference you must clearly indicate that the words are not your own by either putting them in inverted commas (for shorter extracts) or by putting the extract in a separate paragraph which is indented and in a smaller font.

Direct quotes

You directly quote a source if you repeat exactly the words used in the source. For example, consider the following extract from Neil MacCormick, *Practical Reason in Law and Morality* (OUP, 2008) 186-7:

The highly technical legal aspect of the reasoning in the case shines clearly in all the Lords' speeches. Much of the discussion concerns the interpretation and evaluation of precedents. Such discussions include attempts to expound and clarify underlying principles that help unify the precedents into a coherent body of law. This has always to be done while allowing that some may appear anomalous in the light of whatever is the favoured principle, and will be to that extent disapproved and weakened as significant precedents for the future. Unsurprisingly, the precedents that the majority treated as anomalous were treated by the minority as the favoured ones, and vice versa.

The following work submitted by a student contains a direct quote from the above source:

Each judge when referring to the precedents identified some as favoured and others as anomalous. Unsurprisingly, the precedents that the majority treated as anomalous were treated by the minority as the favoured ones, and vice versa.

Because the direct quote has not been attributed to another source, it is being presented as the student's own work. *This is plagiarism.*

Now consider this work submitted by a student:

Each judge when referring to the precedents identified some as favoured and others as anomalous. Unsurprisingly, the precedents that the majority treated as anomalous were treated by the minority as the favoured ones, and vice versa.¹

The direct quote has now been attributed to MacCormick. However the student has not made it clear that they are using MacCormick's own words, and is therefore presenting this particular expression of MacCormick's idea as if it is their own expression. *This is still plagiarism.*

This is what the student should have done:

Each judge when referring to the precedents identified some as favoured and others as anomalous. As MacCormick observed, '[u]nsurprisingly, the precedents that the majority treated as anomalous were treated by the minority as the favoured ones, and vice versa'.²

Alternatively, the student could have paraphrased or summarised the original source.

Paraphrasing

Paraphrasing involves using your own words to express the ideas of another person in the same or a similar level of detail. In the following, the student has paraphrased the MacCormick extract above:

The reasoning in all of the judgments in *Donoghue v Stevenson* [1932] AC 562 is very technical and involves consideration of how precedents should be interpreted and evaluated in a novel case in an attempt to identify underlying principles. Identification of these underlying principles forms an essential aspect of the reasoning process whereby coherence in the law is achieved through unification of the relevant precedents. This is consistent with common law reasoning but the judgments in this case provide an excellent illustration of the manner in which precedents are considered by the majority and dissenting judges in deciding a novel issue before the court.

¹ Neil MacCormick, *Practical Reason in Law and Morality* (OUP, 2008) 187.

² Neil MacCormick, *Practical Reason in Law and Morality* (OUP, 2008) 187.

As a general rule it is not necessary to provide inverted commas or indenting when paraphrasing. However, in the above example, the student's failure to provide a reference means that the student is presenting MacCormick's ideas as their own. *This is plagiarism.*

Summarising

A summary is a brief statement of the ideas of another person. In the following, the student has summarised the MacCormick extract above:

The very technical reasoning in *Donoghue v Stevenson* [1932] AC 562 provides an illustration of the use of underlying principles to organise relevant precedents into a coherent body, and the way in which majority and dissenting judges will have different views about which precedents are to be favoured.

Even though the actual wording is very different to the original source, the student's failure to provide a reference means that the student is still presenting MacCormick's ideas as their own. *This is plagiarism.*

Substituting words

Using a form of words that is substantially the same as those used in the original version but with only a few words changed in an attempt to avoid the need for direct quotation marks or indenting is not a paraphrase or summary of the original version. Rather it is equivalent to a direct quotation.

Consider the following work submitted by a student:

The very technical legal aspect of the reasoning in the case shines clearly in all the Lords' judgments. Much of the discussion concerns the interpretation and evaluation of precedents. Such discussions include attempts to expound and clarify underlying principles that help unify the precedents into a coherent body of law. This has always to be done while allowing that some may appear anomalous in view of whatever is the favoured principle, and will be to that extent weakened as important precedents for the future. Unsurprisingly, the precedents that the majority treated as anomalous were treated by the minority as the favoured ones, and vice versa.³

The student has changed only a few words (the parts underlined) in an attempt to avoid the need for direct quotation marks or indenting. Even though the original source has been referenced, the student is still presenting the words of MacCormick as their own words. *This is still plagiarism.* The student should have either (a) used all of the original words and shown them to be a direct quote, or (b) paraphrased or summarised the original words.

Do I have to attribute everything?

There are some rules of law that are so elementary and uncontroversial that any person who has any level of legal education is able to assert them without citing authority. For example, if you were to state that a contract is a legally enforceable agreement, you would not need to cite the source of that idea. As long as you are using your own words to state such a proposition, there is no need to cite a source. Of course, if you are directly quoting another source, then the words must be properly referenced.

³ Neil MacCormick, *Practical Reason in Law and Morality* (OUP, 2008) 186-7.