

GUIDELINES FOR CASE NOTES¹

1. **Check the SACQ style guide.** The journal uses endnotes rather than footnotes. It will save time if from the beginning you shape your case note in the correct style.
2. **The Introduction:** this identifies the area of law involved, the significance of the case and its central legal issue. The idea is to hook in the readers, alerting them to a change to or a clarification to or a wrong interpretation of the law. The Introduction provides a reason why they must continue reading. You may like to be provocative by saying what you intend to argue – eg that the case was wrongly decided / it constitutes good precedent / provides needed clarity etc. But be concise.
3. **A summary of the law before the case:** provide a summary of the existing law so that the reader can understand the significance of the case. This section may involve reference to the common law or part of a statute and the leading cases. It could be that the case you intend discussing is the first to interpret a statute - in which case your introduction may explain what you understand the purpose/mischief behind the statute. *NOTE: This section might more logically follow the next section.*
4. **The facts of the case:** This is a summary, clearly reported, avoiding words like Respondent / Applicant / Appellant which could cause the reader to lose track of who is who. Rather opt for descriptors like buyer / seller / employer / lessor etc. Unnecessary facts and dates should be pruned. Significant conflicting evidence should be briefly noted. In this section you are reporting, not judging or evaluating and this is not a long section. Ask yourself whether a detail has any bearing on the case at all. If not, cut. (Although sometimes a graphic detail makes the case memorable, like a dead snail in a ginger-beer bottle, as in *Donoghue v Stevenson*) Try and tell the story in an engaging way.
5. **Presenting the court's decision:** The theoretical key to the common law system of precedent is the distinction between the *ratio decidendi* and *obiter dicta* in a case. Your task is to isolate that portion of the judgment which contains the *ratio*. But as someone said "An *obiter dictum* in one case may become *ratio decidendi* in the next." Similarly, a minority judgment may find approval in a subsequent case. So alongside the *ratio* you may want to refer to a hypothetical consideration raised in *obiter* or to the minority judgment.
6. **The significance of the case:** this section amplifies the promise made in the Introduction. Here your critical voice must come through and you move from the descriptive factual account to an analytical and evaluative stage. **Key questions** to answer are:
 - 6.1 Was the court's decision appropriate?

¹ The guidelines for case notes were drafted by Prof Alan Rycroft who holds the chair in Commercial Law and is Deputy Dean of the faculty of law at the University of Cape Town.

- 6.2 Does this decision change / conform with existing law? Was the reasoning consistent with previous reasoning in similar cases? Is it likely that the decision will significantly influence existing law?
 - 6.3 Did the court adequately justify its reasoning? Was its interpretation of the law appropriate? Was the reasoning logical / consistent? Did the court consider all / omit some issues and arguments? And, if there was omission, does this weaken the merit of the decision?
 - 6.4 What are the policy implications of the decision? Are there alternative approaches which could lead to more appropriate public policy in this area?
 - 6.5 This section should also offer an analysis or description of existing literature about the case you are discussing.
7. If your finding is that the decision creates legal precedent, or conversely, upholds legal precedent, what does that mean? What are the implications for the legal and public policy contexts in which this decision sits?
 8. **Do not assume that judges get it right** – it is helpful to remember that they have chosen one approach and that the other party fought the case believing in another approach. You should feel free, if you can justify it with sound reasons, to be politely critical of the judge. Do not be intimidated by the thought that you are exposing yourself in print – the worst that can happen is that someone else will join the debate.
 9. You may be aware of the guidance given to first-year law students as to how to use a case note – they are told to use the **FIRAC model** (Facts, Issue, Rule of Law, Application, Conclusion). This is not a bad model to keep in mind for an academic case note.
 10. **Choose a title which is descriptive of the content.** While it is amusing to read humorous titles, if you want to attract a wide readership the title will be the single most significant way for readers to find it. As NRF rating measures ‘impact’ you might like to increase your chances of being cited elsewhere with a title which is accurate as to its content.