

Foundations of Law Study Session

Chinese Law Students Society (CLSS)

www.usydclss.com

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Citation, court, judges

- ❖ Easy! Look on the first page of the case.

Material facts

- ❖ What the layperson thinks is an important fact may be completely irrelevant to the lawyer.
- ❖ A *material* fact is one where, if changed, would affect the outcome of a case.
- ❖ Material facts are important in determining which principles constitute the *ratio decidendi*.

Procedural history

- ❖ Search for the names of the case and the parties (AustLII, Google).
- ❖ The case you have been given was decided in the New South Wales Court of Appeal. It cannot have originated there.

Legal issues

- ❖ Legal issues arise from the material facts.
- ❖ They are questions concerning legal liability, that are answered by the *ratio decidendi*.
- ❖ Hint: Note that the case is in the New South Wales Court of Appeal.

Ratio(nes) decidendi

- ❖ Literally, 'reason for deciding'.
- ❖ It is essentially, the answer(s) to the legal issue(s) raised by the material fact(s).
- ❖ The principle of the case is found by taking account (1) of the facts treated by the judge as material, and (2) her decision as based on them.
- ❖ In finding the principle it may be necessary to establish what facts were held to be immaterial by the judge, for the principle may depend as much on exclusion as it does on inclusion.

Obiter dicta

- ❖ Reasoning, principles, and statements of law that are *not* strictly relevant to the issues, or are *not* necessary to the outcome of the case are *obiter dicta*.
- ❖ Exception: Statements of law from existing cases are not *obiter dicta*.

Result, orders

- ❖ What was decided?
- ❖ Was it decided in favour of the appellant or the respondent?
- ❖ Costs?

Wider implications of the case

- ❖ *Should not the duty of care owed by such establishments as hotels extend further than to persons within their property boundaries? Briefly discuss the reasons for and against such a proposition.*
 - ❖ Note: it is worth 8 marks. It will be the lengthiest and most discursive part of your assignment.
 - ❖ It is designed to test your ability to analyse policy issues.
 - ❖ Draw upon your readings, materials, and the reasoning within the case itself.

Overall — expression, structure, etc.

- ❖ Download the Sydney Law Review Style Guide:
 - ❖ http://www.law.usyd.edu.au/slr/docs_pdfs/guides/authors_slr_styleguide.pdf
- ❖ Use headings.
- ❖ Ensure there are no spelling mistakes or grammatical errors.
- ❖ All citations end in a ‘full stop’.

Eating About — Encasa

- ❖ **Cost:** \$22 Access / \$27 Non-Access
- ❖ **Time and Date:** 6 p.m., Thursday 9 April
- ❖ **Location:** Encasa, 423 Pitt St, Sydney 2000
- ❖ **Experience:** Priceless
- ❖ **LIMITED PLACES ONLY** (so R.S.V.P via email fast! First in first serve!)