Introduction to Legal Research
SLSS 1001

Presented by
Karen Chilcott
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Room: SLSS1001

Warm up question…
Getting to the festival…

True or false?
You must submit to a search

Room:
SLSS1001
Today:
- Sources of law in Australia
- Understanding legal citations
- Finding the law

Sources of Law in Australia

Primary = the law

Secondary = about the law

(Some very unreliable)
Primary Sources = The Law

Authoritative sources of law made by law making bodies including

– Legislation – made in federal & state parliament
  – Acts or statutes
  – Rules and regulations (sub-ordinate legislation)
    • Made by individuals or bodies to which Parliament has delegated authority

– Cases - case law is developed in courts
  – Recorded in judgements or judicial decisions
  – Published in Law reports as unreported judgements
  – Customary law
Other Primary Sources...

- **Bills**
  - draft of proposed new or altered law
- **Hansard**
  - record of parliamentary debates,
- **Treaties**
  - agreements made between (countries)
Secondary Sources

- **Secondary sources allow you to:**
  - Identify primary sources on a topic
  - Help you understand primary sources
  - Give background information on a legal topic

- **Secondary sources include:**
  - **books** – comprehensive background, history, analysis and discussion of a legal area
  - **journal articles & case notes** – analysis, discussion of legal topic
  - **annotator** – notations and references to treatment of a case
  - **citator** – allow locate information for cases – eg, correct or alternate citations
  - **digests & current awareness services** - provides summaries and updates of cases
  - **looseleaf and online commentary services** – provide commentaries on primary sources
  - **legal encyclopedias** – comprehensive overview of legislation and cases for a legal topic
  - **legal dictionaries** – defines legal concepts and words and phrases
Dictionaries & Encyclopedias

– **Use**
  – overview of subject
  – define legal words and phrases
  – identify legislation or cases on a topic

– **Examples**
  – The Laws of Australia (TLA)
  – Halsbury’s Laws of Australia

– **International Encyclopedia of the Social & Behavioral Sciences**
  › theoretical and sociological context of law
  › via Library catalogue or Library databases
Finding legal tools

'Socio-legal studies'

'Law'

'Socio-legal studies'
In *Director of Public Prosecutions v Darby* (unreported, Sup Ct, 28 November 2002) the NSW Supreme Court has considered whether the activity of a **sniffer** dog amounts to a search. In *Darby*, the defendant was searched outside a nightclub, after a **sniffer** dog had indicated to police that he was in possession of prohibited drugs. This occurred before the commencement of the legislation which is now s 21, *Law Enforcement (Powers and Responsibilities) Act 2002*. The defendant was subsequently charged with drug possession.

The magistrate hearing the charge ruled that the dog's activity amounted to a search, found that the police had no reasonable grounds to suspect the defendant before the dog had shown interest in him, and exercised her discretion under s 138 of the *Evidence Act 1995* (NSW) to exclude the evidence obtained from the police search. The charge was then dismissed.

On appeal, O'Keefe J found that the magistrate had erred in finding that the **sniffer** dog's activity amounted to a search. Accordingly, no issue of the discretion under s 138 properly arose. The court found that the dog's reaction was a basis for forming a suspicion by the police, just as information from another officer, or from a member of the public, or an officer's own perceptions (for example, of a strong odour of cannabis) might be a basis for an officer to form a suspicion. He applied a 1998 South Australian Supreme Court decision – *Re Questions of Law Reserved (No 3 of 1998) (1998) 71 SASR 223* – which came to a similar conclusion. In that case, the SA Supreme Court decided that a dog sniffing a suitcase in the luggage compartment of a bus was not conducting a search. Special leave to appeal this decision was refused by the High Court (*Hoare v The Queen* (1989) 167 CLR 348).

**The second appeal**

There was a further appeal in *Darby* case to the NSW Court of Appeal (*Darby v DPP (2004) 61 NSWLR 558*). All three judges in this appeal agreed that the action of a dog sniffing the air did not constitute a search.
## Case Citation

**Darby v DPP (2004) 61 NSWLR 558**

<table>
<thead>
<tr>
<th>Names of the parties (in italics)</th>
<th>Year in round or square brackets</th>
<th>Volume number</th>
<th>Abbreviation for law report series (or court if not published)</th>
<th>Page number on which case commences</th>
</tr>
</thead>
</table>

- **Medium neutral citation**
  - Wotton v Queensland [2012] HCA 2

- **Unreported**
  - R v Milat *(NSW Sup Ct, No 70114/1994, Hunt CJ at CL, 22 April 1996, unreported)*

- **Criminal case**
  - R v Milat *(NSW Sup Ct, No 70114/1994, Hunt CJ at CL, 22 April 1996, unreported)*

- **Pinpoint citation (reference to a specific page or section)**
  - Mabo v Queensland *(1992) 175 CLR 1 at 3*
Round and Square brackets

- **Case Citation with year in round brackets**
  - The **volume number** is essential for locating the case.

  (Date in round brackets refers to the year in which the decision was handed down. It is not required in order to locate the case in the Law Report series.

  
  *Hoare v The Queen (1989) 167 CLR 348*

- **Case Citation with year in square brackets**
  - the **date** is essential for locating a case in a Law report series.

  (Volumes do not have a unique volume number. Correct volume can only be identified by the year of publication)

  *Barrett v Enfield London Borough [1999] All ER 193*
Legal abbreviations
Hint: Austlii

LAW ENFORCEMENT (POWERS AND RESPONSIBILITIES) ACT 2002 - SECT 148

General drug detection with ⇐ dogs ⇐ in authorised places

148 General drug detection with ⇐ dogs ⇐ in authorised places

(cf Police Powers (Drug Detection ⇐ Dogs ⇐) Act 2001 , s 7)

(1) A police officer may, without a warrant, use a ⇐ dog ⇐ to carry out general drug detection in relation to the following persons:

(a) persons at, or seeking to enter or leave, any part of premises being used for the consumption of liquor that is sold at the premises (other than any part of premises being used primarily as a restaurant or ot

(b) persons at, or seeking to enter or leave, a public place at which a sporting event, concert or other artistic performance, dance party, parade or other entertainment is being held,

(c) persons on, or seeking to enter or leave, a public passenger vehicle that is travelling on a route prescribed by the regulations, or a station, platform or stopping place on any such route,

(d) persons at, or seeking to enter or leave, any part of premises that the officer is authorised to enter under the Tattoo ⇐ Parlours Act 2012 ⇐ to carry out general drug detection using a ⇐ dog ⇐,

(e) persons at any public place in the Kings Cross precinct (being the area including and bounded by the parts of streets specified in Schedule 2 to the Liquor Act ⇐ 2007 ⇐).

(2) In this section:

"public passenger vehicle" means a ⇐ train ⇐, light rail vehicle or bus that is used to provide a public passenger service.

(3) A reference in this section to Schedule 2 to the Liquor Act 2007 ⇐ is a reference to that Schedule as in force on the commencement of this subsection.
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Which sorts of cases get reported?

Cases which:

– Clarify a point of law
– Introduce a new principle of law
– Modify an existing principle of law
– Settle a question of law
– Define or interpret legislation or legal term is instructive in some other way
Which court is the highest in Australia?

Room: SLSS1001
Case Law – how it is made

—Case law is developed in courts
  — recorded in judgements
  — usually published in Law Reports

—Law report series
  — record the decisions of higher courts
  — important to report these - can be used as precedent in future cases

—Authorised reports (approved before publication)
  — Commonwealth:
    • Commonwealth Law Reports (CLR)
  — NSW:
    • New South Wales Law Reports (NSWLR)

—Unreported judgements
  — Not legally significant (most cases)
DARBY v DIRECTOR OF PUBLIC PROSECUTIONS
[2004] NSWCA 431
Court of Appeal: Giles JA, Ipp JA and McColl JA
15 September, 26 November 2004


The Drug Misuse and Trafficking Act 1985, s 37(4)(a), provides:

“(4) A member of the police force may stop, search and detain:
(a) any person in whose possession or under whose control the member reasonably suspects there is, in contravention of this Act, any prohibited plant or prohibited drug, or
...

Held (Ipp JA, McColl JA agreeing): (1) “Search” as the term is used in the Drug Misuse and Trafficking Act, s 37(4)(a), and when applied to a person, involves examining the person for the purpose of finding out whether the person is in possession of any prohibited drugs. (582 [121])

(2) The use of a sniffer dog to pick up the scent of a drug and to go towards the source of the scent and, if it emanated from a particular person, to put his nose on the clothing of that person at the place where the scent was coming from is conduct solely for the purpose of identifying the person possessing the drug. It is not conduct done for the purpose of searching. (582 [122])

Note:
A Digest (3rd ed) — CRIMINAL LAW [637]
Finding Cases & Case Information

**LexisNexis.au CaseBase**
- Case citator
- Provides citations (references to cases) and some full-text Australian Law Reports

**Firstpoint**
- Includes a case citator and digest
- Full-text for several authorised Law report series
  - Commonwealth Law reports (CLR), Federal Court Reports (FCA)

**AustLii LawCite**
- Case law from courts in both Federal and State jurisdictions
- Full-text available for cases
- LawCite is a case citator
Case details in CaseBase

**Darby v Director of Public Prosecutions (DPP)**

Appeal against decision on admissibility of evidence of police search.

Drug detection dog detected drug packet outside nightclub and led police officer through crowd to appellant.

Dog put nose to appellant’s pocket to identify person with drugs as trained.

Local court magistrate rejected evidence of finding of drugs on basis illegal search under (NSW) Drug Misuse and Trafficking Act 1985 s 37(4)(a).

Whether dog’s actions constituted search.

Whether dog’s actions constituted assault and therefore trespass to person.

**Help:** Remitted to Local Court.

**Details about the case**

**Alternative citations**

Court: NSWCA

Judges: Giles, Cio and McCall JJA

Judgment Date: 29/11/2004
**Case Annotations in CaseBase**

- how other cases have referred to a case afterwards
- how the court treated or followed that decision in later cases

<table>
<thead>
<tr>
<th>Applied</th>
<th>A principle of law articulated in the primary case is applied to a new set of facts by the court in the subsequent case.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Approved</td>
<td>The court in the subsequent case has approved the way the court in the primary case, being a court of inferior jurisdiction, has articulated a principle of law.</td>
</tr>
<tr>
<td>Cited</td>
<td>The primary case is merely cited by the court in the subsequent case, without comment.</td>
</tr>
<tr>
<td>Considered</td>
<td>The legal principles articulated in the primary case are considered or discussed without adverse reflection in the subsequent case.</td>
</tr>
<tr>
<td>Disapproved</td>
<td>The decision in the primary case is criticised by the court in the subsequent case.</td>
</tr>
<tr>
<td>Distinguished</td>
<td>The court in the subsequent case holds that the legal principles articulated by the primary case (usually otherwise persuasive or binding authority) do not apply because of some essential difference between the two cases in fact or law.</td>
</tr>
<tr>
<td>Explained</td>
<td>The decision reached in the primary case is justified by the court in the subsequent case, drawing attention to some feature of the primary case that may not be immediately obvious on its face.</td>
</tr>
<tr>
<td>Followed</td>
<td>This annotation is similar to ‘applied’, but is used in circumstances where the facts in the primary case resemble reasonably closely the facts in the subsequent consideration case.</td>
</tr>
<tr>
<td>Not followed</td>
<td>The court in the subsequent case has declined to apply the principles of law articulated in the primary case.</td>
</tr>
<tr>
<td>Overruled</td>
<td>The legal principles articulated in the primary case are held to be incorrect by the court in the subsequent case, which is a court of superior or equivalent jurisdiction.</td>
</tr>
</tbody>
</table>
### Case Citators - Signals

**CaseBase signals for quick overview**

<table>
<thead>
<tr>
<th>Signal</th>
<th>Precedence</th>
<th>Summary</th>
<th>Explanation</th>
</tr>
</thead>
<tbody>
<tr>
<td>🚫</td>
<td>1</td>
<td>Negative treatment</td>
<td>Warning – Negative treatment indicated. A negative (red) signal is given to decisions which have been subsequently reversed, not followed, disapproved or overruled.</td>
</tr>
<tr>
<td>🟢</td>
<td>2</td>
<td>Cautionary treatment</td>
<td>Caution – Questioning or distinguishing treatment indicated. A cautionary (yellow) signal is given to decisions which have been subsequently distinguished, explained, questioned or varied.</td>
</tr>
<tr>
<td>✨</td>
<td>3</td>
<td>Positive treatment</td>
<td>Positive treatment indicated. A positive (green) signal is given to decisions which have been subsequently applied, approved, followed or affirmed.</td>
</tr>
<tr>
<td>🟡</td>
<td>4</td>
<td>Neutral treatment</td>
<td>Neutral or citing treatment indicated. A neutral signal is given to decisions which been either considered or cited (also 'referred to' or 'discussed').</td>
</tr>
<tr>
<td>🥇</td>
<td>5</td>
<td>Citation information</td>
<td>Link to CaseBase entry. A citation information signal is given to decisions for which there is only citation information available.</td>
</tr>
</tbody>
</table>
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At the festival…

Keywords??

Room: SLSS1001
Recognition of same-sex unions in Australia - Wikipedia, the ... en.wikipedia.org/wiki/Recognition_of_same-sex_unions_in_Australia - Jump to Same-sex marriage - The state lower house passed same-sex marriage ... in the 2004 Australian Marriage Act with "the union of two ... Same-sex unions under federal law - Same-sex unions under states ... Australian Marriage Equality www.australianmarriageequality.org/ - An organisation campaigning for gay and lesbian marriage; with details of current laws and events. Where does your MP stand on ... - 12 Reasons Why Marriage ... - We're Waiting

Tony Abbott not happy about gay marriage bill, says senator www.smh.com.au/.../tony-abbott-not-happy-about-gay-marriage-bill-says-s... Nov 26, 2014 - Same-sex marriage advocates are rejoicing that Senator David ... entirely, as he understood the bill needed to appeal to mainstream Australia.

Same sex marriage needs straight people to take a stand in ... www.theage.com.au/.../same-sex-marriage-needs-straight-people-to-take-a... Feb 3, 2015 - If straight people really want to stand up for same sex marriage, they ... which is because every Australian of legal age should have the right to ...

Same-sex marriage – Parliament of Australia www.aph.gov.au/.../Parliamentary Library Briefing Book - Same-sex marriage has been on the political agenda in Australia for several years, as part of the broader debate about the legal recognition of same-sex ...
Smart way to use Wikipedia

Same-sex unions are treated as de facto unions under federal law, though each Australian state and territory is entitled to create their own laws with respect to relationship registers and same-sex partnership schemes. Same-sex couples are prevented from marrying due to a ban on same-sex marriage contained within the federal Marriage Act (1961) amended in 2004 by the Howard Government.[1]

Same-sex unions under federal law [edit]


<table>
<thead>
<tr>
<th>Year</th>
<th>Month</th>
<th>Event</th>
</tr>
</thead>
<tbody>
<tr>
<td>2014</td>
<td>July</td>
<td>A bill to legalise same-sex marriage, the Marriage Deregulation Amendment Bill 2014, is announced by the Liberal Democratic Party senator David Leyonhjelm, though its introduction in the Parliament is again contingent on the promise of a Coalition conscience vote, something which is yet to be guaranteed.[28] In October, Leyonhjelm reintroduced the bill from the Senate notice paper, on the basis that the timing is wrong.[29]</td>
</tr>
<tr>
<td>2014</td>
<td>November</td>
<td>Leyonhjelm reintroduces his same-sex marriage bill into the Senate, titled the Freedom To Marry Bill. Prime Minister Abbott opposes the bill's introduction, though debate on the bill is currently adjourned as the Coalition decides on the prospect of a conscience vote.[30]</td>
</tr>
</tbody>
</table>
How legislation is made in Australia

Bills
drafts of proposed legislation

Source: Capital Monitor
Legislation

Acts (Statutes)
- Made by Commonwealth and State Parliaments
- Tend to define broad principles

Types
- Principal – outline the Law
- Amending – amend Principal Acts

Subordinate/delegated legislation (regulations, bylaws etc.)
- Made by bodies or persons delegated by parliament
- Administrative detail is defined in subordinate legislation

› Overview of how law is made (use Google to find):
  - Parliament of Australia. Infosheet no. 7 “Making Laws”
  - Parliament of NSW “Legislative process explained”
Other Parliamentary Documents

Bills
– drafts of proposed legislation

Hansard
– official record of the proceedings of the Parliament

Explanatory memoranda
– explain background and content of bill

Image source:
Freedom to Marry Bill 2014
Second Reading


Leave granted.


Leave granted.

The speech read as follows—

As most of you are aware, there have been several attempts by the opposition to introduce bills to the Senate, including the Freedom to Marry Bill 2014. As the key sponsor of those bills, I hope the Bill I commend to the Senate is the last of these attempts.

I feel it is important to outline my reasons, if only so to disabuse some of the favour, arguments with which you may not be familiar. The argument itself is straightforward.

I turn first to liberty.
Researching legislation
THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

THE SENATE

EXPLANATORY MEMORANDUM

Schedule 1 —Marriage Act 1961

1 Subsection 5(1) (definition of marriage)

Repeal the definition, substitute:

marriage means the union of 2 people, to the exclusion of all others, voluntarily entered into for life.

(Circulated by authority of Senator David Leyonhjelm)

GENERAL OUTLINE

The purpose of the Freedom to Marry Bill 2014 is threefold.

First, the Amendment reduces the extent to which government interferes in private life. It does this by allowing all Australians regardless of sex, sexual orientation, and gender identity to marry.
Finding Acts in Austlii

Cth Legislation

Commonwealth Consolidated Acts
Commonwealth Repealed Acts
Commonwealth Numbered Regulations 1979-
Commonwealth Repealed Regulations
Commonwealth Bills Explanatory Memoranda 1959-
Commonwealth Legislation Tables 1901-

Commonwealth Numbered Acts 1901-
Commonwealth Consolidated Regulations
Commonwealth Numbered Regulations Explanatory Statements 1991-
Commonwealth Bills 1981-
Australian Parliamentary Library Bills Digests 1976-

Commonwealth Consolidated Acts

[Index] [Table] [Search] [Search this Act] [Notes] [Noteup] [Download] [Help]

MARRIAGE ACT 1961

TABLE OF PROVISIONS

Long Title

PART I--PRELIMINARY

1. Short title
2. Commencement
5. Interpretation

5A. Application of the Criminal Code
6. Act not to exclude operation of certain State and Territory laws
7. Validity of certain marriages not affected
Schedule 1 --Marriage Act 1961

1 Subsection 5(1) (definition of marriage)
Repeal the definition, substitute:

*marriage* means the union of 2 people, to the exclusion of all others, voluntarily entered into for life.

Proposed changes

Current definition in section 5 Marriage Act 1961

"marriage" means the union of a man and a woman to the exclusion of all others, voluntarily entered into for life.
Marriage Act 1961
No. 12, 1961

Compilation No. 25
Compilation date: 21 October 2016
Includes amendments up to: Act No. 61, 2016
Registered: 21 October 2016

An Act relating to Marriage
Part I—Preliminary

1 Short title
This Act may be cited as the Marriage Act 1961.

2 Commencement
(1) Sections 1, 2 and 3, subsection 5(1), section 9, Parts III and VIII and section 120 shall come into operation on the day on which this Act receives the Royal Assent.

Endnote 3—Legislation history

<table>
<thead>
<tr>
<th>Act</th>
<th>Number and year</th>
<th>Assent</th>
<th>Commencement</th>
<th>Application, saving and transitional provisions</th>
</tr>
</thead>
</table>
## Legislative History

### Endnote 3--Legislation history

<table>
<thead>
<tr>
<th>Act</th>
<th>Number and year</th>
<th>Assent</th>
<th>Commencement</th>
<th>Application, saving and transitional provisions</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Marriage Act 1961</strong></td>
<td>12, 1961</td>
<td>6 May 1961</td>
<td><strong>ss. 1-3, 5(1) and 9, Part III (ss. 22-24), Part VIII (ss. 107-110) and s. 120:</strong> 6 May 1961 Remainder: 1 Sept 1963 (see Gazette 1963, p. 1977)</td>
<td></td>
</tr>
<tr>
<td><strong>Marriage Act 1973</strong></td>
<td>35, 1973</td>
<td>27 May 1973</td>
<td>1 July 1973 (see Gazette 1973, No. 70, p. 3)</td>
<td><strong>ss. 8(2) and 12(2)</strong></td>
</tr>
</tbody>
</table>

### Notes

- **History of a piece of legislation**
  - assent and commencement date
  - reprint history
- **Table of Acts (in Notes)**
  - includes amendment history by date & section
- **Point-in-time legislation**
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What is the law when a regulation and a statute contradict each other?
Finding Legislation & other Parliamentary materials

**Austlii**
- Cases and legislation for all Australian jurisdictions

**Official legislation sites**
- Commonwealth: Federal Register of Legislation (formerly ComLaw)
- NSW: NSW Legislation (site)

**Other state Parliamentary Websites**
- Bills, debates and other parliamentary information

**Capital Monitor**
- Monitors parliamentary proceedings and business
- Commonwealth & NSW
- Access via Library Socio-legal databases
Locating secondary resources

- Fisher 2 Hour & ereadings
  - readings required for a unit of study
  - search for Unit of study readings: SLSS 1001
- print material Level 3 Fisher Library
- electronic: use unikey

- Library catalogue / Library search
  - search for books by subject
  - find journal articles & case notes from a citation

Example citation:
Other secondary sources

- Comprehensive Legal Research Services
- Law Reform Commission reports
Find articles on a topic

Database Access

- A to Z
- Subject list
  - Arts & Social Sciences
    - Socio-legal Studies
    - Sociology
  - Law
  - General and Multi-subject
    - News Services
    - Legal resources for Social Sciences
Citing and academic honesty

- All academic activity requires you to acknowledge when you have used another person's ideas, words or images
- You cannot simply pass someone else's ideas off as your own - this is called plagiarism

Help avoiding plagiarism

- Plagiarism & academic honesty
- The Writesite
Karen Chilcott

Academic Liaison Librarian: School of Social and Political Sciences - Anthropology, Graduate School of Government, Government and International Relations, Political Economy, Sociology and Social Policy, Peace & Conflict Studies, Centre for International Security Studies, Economics

Contact details

Email: karen.chilcott@sydney.edu.au
Phone: +61 2 9351 7289
Schedule an appointment with Karen Chilcott

Location

Arts & Social Sciences Library Services
Fisher Library, Level 2 - North
F03 – Fisher Library
The University of Sydney
NSW 2006 Australia