CHAPTER 2

Understanding the Law

[2.10] This chapter contains brief discussions of aspects of the law designed to assist the student or layperson in gaining a better understanding of the law and how it operates. Not only does this provide essential background to the discussion of detailed topics in later chapters, it may also assist in understanding change within our legal system.

At a practical level, the section on finding the law (commencing at [2.70]) has been included to assist non-lawyers in approaching legal information with more confidence and to introduce lawyers who become involved in construction law matters to the varied sources of legal information which may be of use both to themselves and their clients.

LEGAL EXPRESSIONS

[2.20] There are many technical words and expressions in the construction industry that are confusing to those unfamiliar with them. Most people in the construction industry know the difference between foundations and footings, cement and concrete, door jambs and door frames, and know that you build with timber and put wood on fires. In the same way, there are specialised legal words and expressions which are unknown to, or misunderstood by, the general community.

The history of the law and legal education contributes to this situation in that, for example, there are many legal phrases and maxims which sometimes continue to be expressed in Latin. Many such expressions only serve to mystify and confuse the layperson or to create a smokescreen around many straightforward legal concepts. It has been said of the maxim *res ipsa loquitur* (the thing speaks for itself), for example, that, if it was not for the fact that it is in Latin, it would not be given as much respect and attention. To some extent, the trend to the use of "plain English" in legislation, legal documents and writing is removing the obscurity of legal language.

Apart from understanding the special legal words and phrases, there is a major problem in recognising the different meanings given by the law to common English words. Often in construction contracts the work is required to be of a *reasonable* standard or the architect is to be *reasonably* satisfied. It is interesting to speculate on the various interpretations which can be made of such an expression. Assume that in the bona fide (if this were not a text on law the word "genuine" might have been used) attempt to overcome delays, a contractor went ahead with internal cement render on a high rise building

before the floors were closed in. The work was performed on hot, dry days, and the render was extensively cracked and drummy. The contractor may believe that, considering their bona fide efforts, it is *reasonable* in the circumstances for the defects to be accepted. The architect may believe that, to be *reasonably* satisfied, he or she is required to make a subjective assessment of the quality and not the circumstances and may require extensive rectification.

The *legal* interpretation of what a *reasonable* standard is in the circumstances will generally be based upon an objective assessment of what a theoretical fair-minded and informed person would determine. The *reasonable* satisfaction of the architect will similarly be considered by an objective assessment of what an architect with normal skill and knowledge would require. This objectivity may lead to a determination somewhere between the positions of the architect and the contractor as stated. Alternatively, there may be many situations where the objective standard required of an individual will be higher than that which the individual anticipates. This is especially so with professionals and others exercising expertise.

There are numerous other examples of common words with special legal meanings:

- "Negligence", apart from its common meaning of a want of proper care, also forms a cause of action at law with separate elements which must be proved.[1]
- A "conveyance" is any vehicle for carrying or transmitting something, whilst at law it is the general law instrument for transferring property.[2]
- A "Full Bench" is where a number of judges hear a case, often on appeal, and is not a reference to their state after a long lunch.
- An "execution" in law is either the process of signing and witnessing a contract or a method of enforcing a judgment.

As an assistance to understanding the jargon of the law, glossaries of commonly encountered terms can be found in many of the construction law texts referred to in the "Further Reading" section at the end of this book. A "constructionary" is available as part of the online construction law service provided by law firm Minter Ellison.[3]

EVOLUTION OF THE LAW

[2.30] The doctrine of precedent (see [1.20]) suggests that a static body of legal principles is applied by judges to the facts to resolve a dispute. If this were so, then Australia could well be governed by precepts unchanged from medieval law. Obviously this is not the situation in reality. Although some

1. See [6.30] and following.
2. See [7.240].
3. http://www.constructionlawmadeeasy.com/Constructionary.

schools of jurisprudence (the philosophy of law) would hold otherwise, judges may, and indeed must, make case law, and thus new legal principles and causes of action do evolve within the common law system. An example of this process has been the development by the High Court of Australia in recent years of implied rights under the *Constitution*.

New case law is necessary because our society is not static. Two major stimuli to the development of law are technological change and changing social attitudes and expectations. Judges must determine issues in circumstances created by these stimuli. They must interpret legislation regulating our private and working lives and institutionalising social values such as equality and individual freedom. As well, the nature of the judicial process results in judges refining or distinguishing statements of principle of law. Often it is not a straightforward matter with the logical application of legal principles to the facts of a case. The fact situation may not be identical. The principles may be expressed too broadly, too narrowly or imprecisely. They may be illogical, or just wrong. The precedents may be conflicting.

Perhaps the greatest common law development in the last 80 years has been in the area of legal duties owed by an individual, and the liability of an individual for her or his negligent acts which cause injury or loss to others. An immense body of case law has been created by judicial decisions extending and refining the principles which apply in the area of law called "negligence", see [6.30]. The legislative intervention in all States and Territories under the so-called "tort law reform" of proportionate liability introduced since 2000 has modified those common law rights to a significant degree, see [6.310].

Case study: liability for negligent advice

[2.40] One important direction which the evolution of this cause of action has taken in recent years is liability for economic or financial losses resulting from advice or information negligently given. An illustration of the evolutionary process traced through a series of cases is presented below. An interesting aspect of this process is the difference in approach which has developed between the English and the Australian courts (in the latter case, based initially on a relationship of proximity and more recently vulnerability and foreseeability), see [6.40].

The courts have long accepted that a party to a contract who acts on a misrepresentation in the contract which was made innocently by the other party will have a remedy at law. It has also been well established that in all circumstances, irrespective of the existence of a contract, a remedy will exist for fraudulent or deceitful misrepresentation.

However, where an innocent misrepresentation was made outside a contract, the position was that no action would lie for pecuniary loss suffered as a result. The classic decision to that effect is *Derry v Peek*[4] in which company

4. *Derry v Peek* (1889) 14 App Cas 337.

directors were not liable (in the absence of fraud) for erroneous statements in a prospectus which induced an investor to purchase shares. An exception to this principle was recognised under the equitable concept of a fiduciary relationship, in which certain persons were held to owe a special duty to others to take care and so a liability to indemnify would arise. Accordingly, in *Noctorn v Lord Ashburton*[5] and *Woods v Martins Bank*,[6] a solicitor and a banker respectively were liable in tort for damages to their client.

Even after the extended concept of liability for negligence created in *Donoghue v Stevenson*,[7] the courts were reluctant to apply this new liability principle to negligence other than that causing physical damage or injury. In *Candler v Crane, Christmas & Co*,[8] the majority held that the plaintiff investor had no cause of action against accountants who had negligently prepared a statement of a company's accounts, knowing that they were to be relied upon by the investor. Lord Denning, in a dissenting judgment, considered that a duty could be owed in such a case outside the area of fiduciary obligation. He considered that certain professionals whose occupations involved examination, calculation and reporting would owe a duty to people who relied upon their professional expertise.

It was more than a decade later that the House of Lords agreed with the principle formulated by Lord Denning and overruled the decision of *Candler v Crane, Christmas & Co*.[9] This was done in the landmark case of *Hedley Byrne & Company Ltd v Heller & Partners Ltd*,[10] in which a banker gave advice on the financial position of a customer to another bank which was acting for an advertising agency which, in reliance on the advice given, incurred considerable debts on the customer's behalf. The customer went into liquidation, and the advertising agency sued the banker for the loss incurred. Although it was held that the banker was not liable because a limitation had been placed on liability when the inquiry was made, the principle of liability for economic loss arising from negligent misstatement was established. There was some difference of opinion among the judges as to the circumstances in which the liability would arise, although it was clear that an action would only lie if it were established that the maker of the statement owed a duty to the recipient to take care in giving the advice.

The next stage of the evolutionary process from an Australian viewpoint is the case of *Mutual Life & Citizens' Assurance Co Ltd v Evatt*[11] where an investor had sought advice about the stability of a company (H G Palmer) from an

5. *Noctorn v Lord Ashburton* [1914] AC 932.
6. *Woods v Martins Bank* [1959] 1 QB 55.
7. *Donoghue v Stevenson* [1932] AC 562 and see [6.40].
8. *Candler v Crane, Christmas & Co* [1951] 2 KB 164.
9. See n 8.
10. *Hedley Byrne & Company Ltd v Heller & Partners Ltd* [1964] AC 465.
11. *Mutual Life & Citizens' Assurance Co Ltd v Evatt* (1968) 122 CLR 556.

associated company (Mutual Life). The High Court was prepared to extend the liability for negligent advice to a wide group of people, whereas on appeal to the Privy Council[12] the decision was reversed and qualifications placed on the liability. These, in effect, meant that to be liable, a person must:

- be in the business of giving advice or undertake a similar responsibility;
- have knowledge of reliance on the advice; and
- have been negligent.

In addition, the advice given must actually have been relied upon by the plaintiff.

This restricted formula made it more difficult to establish liability, for example, in *Presser v Caldwell Estates Pty Limited*[13] where an estate agent was held not liable for statements that land was not filled. In professional situations, however, it is not so difficult: see, for example, *Day v Ost*[14] where an architect was held liable to a sub-contractor for his assurance that the client had adequate funds to pay for the remaining work; and *Scott Group Limited v McFarlane*[15] where an auditor was liable for the negligent audit to another company which relied upon the auditor's accounts to make a take-over offer.

The law's development in Australia was continued via the High Court's decision in *L Shaddock & Associates Pty Limited v Parramatta City Council.*[16] The Court affirmed the view it expressed in *MLC v Evatt*, and thus the law in Australia now permits a wide range of circumstances in which negligent misstatement will give rise to liability, including that for purely economic loss. The High Court held that the Council was liable for negligent advice concerning road-widening proposals affecting land given to the prospective purchaser who was seeking a zoning certificate. Even though the Council was under no statutory obligation to provide such information, nor was it in the business of giving such advice, it was sufficient that the Council knew or ought to have known that the serious request for information would be relied upon. The plaintiff recovered a purely economic loss, being the difference between the amount paid for the land and its value as affected by the undisclosed road widening proposals.

Thus, *Shaddock* widened the scope of the persons who might be liable beyond those within a "special relationship" and indicates further that there is no crucial difference between information and advice which has been negligently produced or provided.

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12. *Mutual Life & Citizens' Assurance Co Ltd v Evatt* (1970) 122 CLR 628.
13. *Presser v Caldwell Estates Pty Limited* [1971] 2 NSWLR 471.
14. *Day v Ost* [1973] 2 NZLR 385.
15. *Scott Group Limited v McFarlane* [1978] 1 NZLR 553.
16. *L Shaddock & Associates Pty Limited v Parramatta City Council* (1981) 150 CLR 225.

The next case in the development of the principle was *San Sebastian Pty Limited v Minister Administering E P & A Act 1979*,[17] in which the High Court held that a planning scheme did not make or contain the representations upon which the plaintiff relied. The Court referred to the necessity for reliance on the part of the plaintiff and indicated that such reliance should be reasonable in all the circumstances or, alternatively, it should be shown that the defendants intended to induce reliance.

The decision of the High Court in *Tepko Pty Ltd v Water Board*[18] emphasised the necessity first to prove that the speaker must, or ought to, have realised that the recipient would rely, and secondly that in all the circumstances it is reasonable that reliance be placed on the statement. The circumstances include the nature of the subject matter and the relationship, and the relative capacity to exercise judgment.

The principle has been applied in numerous cases which exemplify the essential element of reliance in establishing a sufficient relationship of proximity or, alternatively, vulnerability, see *Perre v Apand Pty Ltd*[19] to justify the imposition of a *duty of care*. It has been applied, for example:

- in cases where purchasers of property relied upon a council's certificate of compliance;[20]
- in relation to a real estate agent, valuer and property manager concerning advice given as to the "leasability" of certain premises;[21] and
- in a claim against an architect and a glass manufacturer about advice to use particular glass.[22]

Some limits on the principle were identified in a case involving a claim against an auditor by a finance company which lent money in reliance upon accounts of a company audited by the defendant, *Esanda Finance Corporation Limited v Peat Marwick Hungerfords*.[23]

The *Hedley-Byrne* principle no longer has the significance in Australia which it retains in England, where recovery for economic loss is generally confined to cases of misstatement. The distinctions between negligent *acts* as opposed to *statements*, and between *economic loss* and *physical damage* were formerly of great significance. These have, to a large degree, now been absorbed into the development by the High Court of Australia of liability for loss irrespective

17. *San Sebastian Pty Limited v Minister Administering E P & A Act 1979* (1986) 162 CLR 340.
18. *Tepko Pty Ltd v Water Board* (2001) 206 CLR 1.
19. *Perre v Apand Pty Ltd* (1999) 198 CLR 180.
20. *Woollahra Municipal Council v Sved* (1996) 40 NSWLR 101.
21. *Richard Ellis (WA) Pty Limited v Mullins Investments Pty Limited* (1995) 124 FLR 157.
22. *Multiplex Constructions Pty Limited v Pilkington (Aust) Ltd* (1997) (unreported, WASC, Sanderson J, 16 May 1997).
23. *Esanda Finance Corporation Limited v Peat Marwick Hungerfords* (1997) 188 CLR 241.

of its character so long as there exists a sufficient relationship of proximity and proof that the loss was foreseeable.

An essential element in establishing the relationship of proximity is proof of reliance on the part of the plaintiff. Another significant impact upon the use of such a cause of action is its similarity to an action for misleading and deceptive conduct in contravention of s 52 of the former *Trade Practices Act 1974* (Cth), now s 18 of the *Australian Consumer Law*. In some respects the latter cause of action is more favourable to a plaintiff than the common law action.[24]

Legislative change

[2.50] More pervasive than evolutionary change in case law is the impact on our lives made by new legislation. Society expects, or accepts, the role of legislators in regulating much of our public and private lives. By comparison with judges who may decide only those issues before them, Parliaments may (subject to constitutional restriction) address any topic in legislation, so changes to the law by way of statutes and delegated legislation are more immediate.

Impetus for a change comes usually through the development of party-political policies but can also result from recommendations of Parliamentary Committee enquiries, Royal Commissions, Boards or Special Commissions of Inquiry and Law Reform Commissions, in response to public opinion as expressed by interest groups and the media, or from the expertise of the bureaucracy. The proportionate liability and trade practices reforms referred to throughout this text are examples of the way in which the common law has been significantly changed by such a process.

LEGAL REMEDIES

[2.60] *Remedies* are the essential element of the legal process. Society expects that the legal system will regulate activities, establish and enforce rights and correct wrongs. The law eschews self-help remedies except in limited circumstances, for example, the principles that parties to a contract may agree to specific forms of redress should its terms be broken and that individuals may defend themselves or their property with force that is reasonable in the circumstances.

Once a wrong has been suffered, the victim must act so as to limit or mitigate the loss or damage. A court may reduce a successful party's entitlement to compensation to the extent to which that party's own negligence has contributed to the injury or loss.[25] The amount of damages for economic loss may

24. Paterson J and Bant E, "In the Age of Statutes, Why Do We Still Turn to the Common Law Torts" (2016) 23 TLJ 139.

25. See [6.90].

also be apportioned if proportionate liability applies to the defence, such that the amount actually recovered is only that attributed to defendants who are able to pay.[26]

Legal or judicial remedies which can be sought in a court action are quite varied and depend on factors such as the type of wrong committed and the relationship between the parties. Some have their origin in the common law, or in equity; others will be prescribed in a statute. Some are granted automatically, others only at the court's discretion. Grant of the remedy may depend upon proof of a wrongdoer's intention or negligence, but in some cases liability is strict, regardless of intent. Complex rules determine the extent or measure of damages and the extent to which consequential loss can be compensated.[27]

Other than an order for damages, which are strictly speaking *remedial*, there are other orders which a court may give. A *declaratory* order states the legal position and rights of parties to a dispute, and *consequential orders* for the resolution of the dispute are given to enforce the declaration. An *injunction* may order a person to act (*mandatory*) or restrain them from acting (*restrictive*). The latter order is sought to avert a threatened harm, in anticipation of a breach of a private right or public obligation, or to prevent the continuation of the breach. When urgent action is required, such as to prevent demolition of a building or pollution of the environment, an *ex parte* injunction may be ordered: see [6.290].

When a "public" wrong (*crime*) has been committed, the state rather than the victim punishes the wrongdoer. The usual sanctions are imprisonment or a monetary penalty, although an offender may be ordered to perform community service or be subject to other orders such as participation in community-based programs directed to reducing the likelihood of offending, rehabilitation or restitution. Where a crime has caused a personal suffering, the victim is entitled to take a civil action against the wrongdoer for a personal remedy. Victims and their families may also be entitled to monetary compensation under criminal injuries compensation legislation.

When a "private" wrong (*tort*) has been committed, the aim of legal action is, fundamentally, to compensate the victim for the injury or loss suffered. Occasionally a court will order the return of property or grant an injunction, but generally pecuniary compensation (called "damages") is awarded to cover such diverse situations as bodily injury, physical damage to property and harm to reputation, personal feelings or pecuniary interests. The court aims to provide a sum of money which, so far as money can do, will put the injured party in the same position as had the wrong not been committed. Damages may include an element of punishment or vindication of a party's

26. See [6.310].
27. See [5.490], [5.520] and [6.280].

behaviour, rather than strict compensation, or may compensate the person for pain, suffering and inconvenience rather than strict economic loss.[28]

Where a wrong has concerned a breach of *contract*, because of the relationship between the parties in contract, the injured party has different remedies.[29] The breach of itself does not end the contract; this will occur when the injured party elects to treat the contract as being dissolved, either by signifying acceptance of the breach as repudiation and bringing the contract to an end or by suing for rescission, which involves the handing back of property passed under the contract. Although, generally, this will only be granted if it is possible thereby to restore the parties to their pre-contract position.

Alternatively, the injured party may elect to keep the contract on foot and claim pecuniary compensation for the breach, that is, damages. The damages which will be awarded in this situation equal the amount necessary to place the injured party, so far as money can do, in the position in which he or she would have been had the contract been performed properly. Damages here are purely reparatory, and there is no element of punishment or vindication.

Another remedy available for the relief of a breach of contract is an order for specific performance. This is, in effect, a positive injunction and requires that the defaulting party carry out the obligations imposed under the contract. As a general rule, specific performance will not be granted where damages would be an adequate remedy. Conversely, where the contract is for the acquisition of a unique thing (for example, real estate) specific performance might be granted. It is unlikely to be granted where the contract requires the performance of services, such as under a construction contract.[30]

The law places limitations on the period within which a person may seek a remedy for a wrong done to them or for a breach of contract to which they are a party. Specific provisions and time limits in the *Limitations Act* are considered more fully in later chapters.[31]

FINDING THE LAW

[2.70] Starting with the proposition that if a law exists it will be written down somewhere (and will now almost certainly be accessible on a website) the next step is to find where and in what form the law is recorded.

Enacted law is found in the officially authorised volumes of statutes or authorised websites and other delegated legislation printed by the relevant government printer or, occasionally, by a commercial publishing company under authority.

28. See [6.280].
29. See, further, [5.420]-[5.530].
30. See [5.540].
31. See, especially, [5.560] in relation to contract and [6.330] in relation to torts.

Unenacted law, that is, case law, is recorded in law reports, or as unreported decisions in the relevant Court records.

Having said that, it is rare today for practitioners or students to rely wholly (or even primarily) upon printed versions of legislation and materials. In the past two decades, in particular, there has been an explosion in the amount of material available online, whether via (paid) subscription services or via publicly available sites like AustLII (www.austlii.edu.au) and Foundation Law developed by the Law Foundation of New South Wales (www.lawfoundation.net.au) with links to websites across the world.

The internet provides access to many government websites which include legislation and case law from all Australian jurisdictions. Others include www.findlaw.com.au, www.lawportal.com.au and the legislative websites maintained by each Parliament (for example, at Federal level, www.comlaw.gov.au). Some of these, such as the Thomson Reuters site (FirstPoint), provide, via a single point of access, the ability to search a topic across legislative, case law and commentary databases. Others, such as TimeBase, allow for both up to the minute and historical searches of legislation. The libraries of Australia's law schools provide research guides to assist in finding the law via the most relevant sources: see, for example, the Melbourne Law School site at (www.law.unimelb.edu.au/lawlib).

Law reports

[2.80] In order for the doctrine of precedent to operate, the judgments of the courts must be recorded and be accessible to the legal profession. Although English reports go back for many centuries, it is only since the mid-19th century that an adequate system of law reporting both by commercial publishers and by co-operative professional organisations has been in operation.

Important decisions of superior courts (the State and Territory Supreme Courts and the Federal, Family and High Courts of Australia) are recorded in the Authorised Reports or in other general series reports. Other cases of interest in particular areas of the law can be included in the myriad specialised reports and journals now published (including the *Building Law Reports* (BLR) and the Reports in the *Building and Construction Law Journal* (BCL)). Judgments from other Courts and Tribunals, for example, the Local Government and Land & Environment Courts and Consumer and Administrative Tribunals or Workers Compensation Commissions will usually be found only on the relevant website or in specialised reports but, increasingly, are available on AustLII and elsewhere.

A useful innovation in recent years has been the development of "medium neutral unique identifiers" for Courts and Tribunals. This allows for each case, whether reported or unreported, to be uniquely identified by reference to the year, Court/Tribunal and the sequence number of the judgment within that Court/Tribunal. For example, the case *Kirk v Industrial Relations Commission of New South Wales* (discussed at [3.60]) has the medium-neutral

citation [2010] HCA 1. Whilst an "approved" citation should be used in place of these citations where they exist (for example, for *Kirk* (2010) 239 CLR 531), these court-coded citations make searching for and accessing judgments much easier. A listing of the relevant codings for the various Courts and Tribunals is set out in Table A to the *Australian Guide to Legal Citation* (3rd ed, 2010).

Structure of law reports

[2.90] Reports of legal cases typically have the following parts which provide information for the reader:

1. The name of the parties; usually the plaintiff's will be the first although this may be reversed in an appeal case.
2. The name of the Court, judge/s and the date/s of the hearing and judgment.
3. Catchwords – brief headings stating the legal questions involved.
4. A "headnote" summarising the facts and setting out the legal principles determined in the judgment. Often this will include the cases which were relied upon in making the decision, that is, cases followed, applied, distinguished or overruled by the Court. This can be useful in research for deciding whether the case is relevant enough to be read in detail.
5. A list of cases cited in argument in addition to those cited in the judgment/s and referred to in the headnote.
6. A statement of the remedies sought in the action.
7. The names of the counsel (barristers), and sometimes a summary of their arguments.
8. The judgment/s themselves.
9. The order of the court, sometimes included in the judgment/s.
10. The names of the respective solicitors for the parties.

Of these parts, only the judgments and the order are authoritative, the rest being merely a guide to understanding. Unreported decisions on Court or government websites (such as Caselaw in New South Wales) will set out similar information, though likely in less detail.

Commonly encountered reports

[2.100] The following list of "authorised" law reports, with an example of the abbreviated way in which they are cited, contains those general reports which are most often encountered and referred to in this text. Further details on the manner in which cases are to be cited may be found in, for example, the *Australian Legal Guide to Citation* (3rd ed, 2010). The authorised law reports contain only a selection of the decisions of the courts, not a complete statement of the court's decisions.

In other countries, as in Australia, there are subsidiary report series covering a range of Courts. In the UK, these are known as "nominate reports" and include the *All England Law Reports* and *Weekly Law Reports*; and in Canada, include the *Dominion Law Reports*. There are also medium-neutral identifiers – for example, UKSC for the United Kingdom Supreme Court, EWHC (TCC) for the England and Wales High Court–Technology and Construction Court, and NZCA for the New Zealand Court of Appeal.

Jurisdiction	Name of report	Primary courts covered	Abbreviation for citation
Australia			
Federal	*Commonwealth Law Reports*	High Court of Australia, Privy Council	CLR[32]
	Federal Court Reports	Federal Court of Australia	FCR[33]
ACT	*Australian Capital Territory Law Reports*	ACT Supreme Court	ACTLR
NSW	*New South Wales Law Reports*	NSW Supreme Court	NSWLR (from 1971: previous Reports SR (NSW) and NSWR)
Northern Territory	*Northern Territory Law Reports*	NT Supreme Court	NTLR (from 1990: previously NTR, in *Australian Law Reports*)
Queensland	*Queensland Reports*	Queensland Supreme Court	Qd R (from 1958: previously QSR)
South Australia	*South Australian State Reports*	SA Supreme Court	SASR (from 1921: previously SALR)
Tasmania	*Tasmanian Reports*	Tasmanian Supreme Court	Tas R (from 1979: previous Reports Tas SR and Tas LR)
Victoria	*Victorian Reports*	Victorian Supreme Court	VR (from 1957: previously VLR)
Western Australia	*Western Australian Reports*	WA Supreme Court	WAR (from 1958: previously WALR)
Canada	Supreme Court Reports	Supreme Court of Canada	SCR

32. "Unauthorised" reports covering the High Court include the *Australian Law Reports* (ALR) and *Australian Law Journal Reports* (ALJR).
33. "Unauthorised" reports covering the Federal Court include the *Australian Law Reports* (ALR) and *Federal Law Reports* (FLR).

Jurisdiction	Name of report	Primary courts covered	Abbreviation for citation
New Zealand	New Zealand Law Reports	NZ Supreme Court, NZ Court of Appeal, etc.	NZLR
United Kingdom	Appeal Cases	House of Lords (to 2009), UK Supreme Court (from 2009) and Privy Council	AC (to 1890, ChD)
	Queen's Bench	English High Court and Court of Appeal	QB
	Chancery Division	English High Court and Court of Appeal	Ch (to 1890, ChD)

Citation of cases

[2.110] The citation of a case is a shorthand reference to its location in a law report. Most reports are issued in annual volumes which may be identified by the year (written in square brackets – for example, *SMK Cabinets v Hili Modern Electrics Pty Ltd* [1984] VR 391) or by a volume number (where it is customary to add the year/s in round brackets – for example, *Tabcorp Ltd v Bowen Investments Pty Ltd* (2009) 236 CLR 272). The last number in a citation is the page number of the volume at which the case commences. The order of parties in a case indicates, at trial level, which is the plaintiff and defendant in civil matters, or appellant and respondent on appeal.

The following example illustrates the way a case is reported throughout its process of hearing and appeals up the Court hierarchy. The case involved, among other things, consideration of the approach to be adopted by the Court in assessing the quantum of damages for a defective building. The case was heard at first instance by a single judge in the Supreme Court of South Australia. It was reported at this stage as:

Carosella v Ginos & Gilbert Pty Ltd (1981) 27 SASR 515. It was also reported at (1981) 45 LGRA 441.

The plaintiffs appealed in relation to one aspect of the matters determined at first instance, to the Full Court of the Supreme Court of South Australia where the appeal was heard by three judges who varied the original decision on that point. The Full Court's judgment is reported at:

(1981) 27 SASR 515 at 526 and (1981) 46 LGRA 51.

The plaintiffs further appealed to the High Court where a bench of five justices reversed the Supreme Court (Full Court) decision. The joint judgment is reported at:

(1982) 57 ALJR 315 and at (1982) 47 ALR 761 (but, not in the authorised High Court reports, CLR).

Legislation

[2.120] The statutes of each legislature are published by the relevant government printer. From time to time they are consolidated into printed volumes with all statutes in alphabetical order. These are supplemented by annual volumes of new and amending statutes.

As noted above, the ability to access legislation, and especially to check versions applying at different dates, has been revolutionised by online publishing resources. These include the TimeBase and Lawlex (SAI Global) subscription services, and websites of the various State, Territory and Commonwealth legislatures.

Much delegated legislation is published in the relevant *Government Gazette*, and in annual volumes such as Victorian or Tasmanian Statutory Rules or the New South Wales Rules, Regulations, By-laws, Laws, Ordinances etc. Commercial looseleaf and online encyclopaedia services (such as the "Property and Construction" listing in TimeBase LawOne) are particularly helpful for those in the construction industry wishing to discover the most relevant or the most recent legislation and regulation with which they must comply, along with annotations. The material is also available on the internet.

Textbooks

[2.130] The law as stated in law reports and statutes will rarely provide a comprehensive guide to a topic, or give non-lawyers even a basic understanding of particular problems which concern them. Adequate explanation of the law is often only found in textbooks: a list of commonly used construction law texts can be found in the "Further Reading" at the end of this book.

Legal propositions stated by text writers do not form part of the law, although in building cases some of the learned texts, such as *Hudson's*, *Keating* or *Brooking* are often quoted as authority in the absence of relevant case law.

Finding construction law

[2.140] Those in the construction industry and their legal advisers need to have access to relevant legal and technical information and precise statements of their rights and obligations. The major cases of relevance in the area are found in the authorised and general law reports. Other important building and local government cases are published in the specialised reports or noted in the numerous reporting services available in the industry. Looseleaf and online encyclopaedia services (such as *Building and Construction Contracts in Australia* (Thomson Reuters)) are essential tools, both for legal practitioners and for construction professionals and contractors.

With this in mind, the following table lists some of the available sources of construction law.

Law reports and journals

Publication	Abbreviation	Coverage	Available online?
Australasian Journal of Construction Economics and Building	AJCEB	International – articles on construction topics generally	✓http://epress.lib.uts.edu.au/
Australian Construction Law Bulletin	ACLB	Primarily Australian but some international – articles and case notes	✓LexisNexis
Australian Construction Law Newsletter	ACLN	Primarily Australian but some international – articles and case notes	✓By subscription and via SoCLA and AustLII
Building and Construction Law Journal	BCL	Primarily Australian but some international – articles and case reports	✓Thomson Reuters
Building Dispute Practitioners Society Newsletter	BDPSNews	Primarily Australian but some international – articles and case notes	No
Building Law Reports	BLR	Primarily UK but some international – articles and case reports	✓I-law (Informa)
Construction Law International	CLInt	International – articles and updates	✓www.ibanet.org
Construction Law Journal	ConstLJ	Primarily UK but some international – articles	✓Westlaw
International Journal of Law in the Built Environment	IJLBE	International	✓By subscription
Local Government and Environmental Reports of Australia	(LGRA to Vol 77, then LGERA)	Australia – case reports	✓Thomson Reuters

Online encyclopaedias/commentaries

Publication	Coverage	Available online?
Building and Construction Contracts in Australia (Dorter & Sharkey)	Primarily Australia but reference to overseas material	✓Thomson Reuters
Commercial Arbitration Law and Practice (Jacobs)	Includes detailed material on security of payment	✓Thomson Reuters
Construction Law Made Easy (Minter Ellison)	Primarily Australia but reference to overseas material	✓www.construction-lawmadeeasy.com

Textbooks and other materials

[2.150] The key texts are listed in the Further Reading – General section at the end of this book. In addition, texts relevant to specific issues are referred to throughout this text.

A great deal of useful material available to students and practitioners via the websites of law firms with construction law practices and the various Societies of Construction Law throughout the world (see, for example, www.scl.org.uk in the UK and www.scl:org.au in Australia).